Tab 1	**CS/SB 84** by **TR, Book (CO-INTRODUCERS) Stewart**; (Identical to H 00091) Transportation Facility Designations/Jimmy Buffett Highway

Tab 2	**CS/SB 196** by **ATD, Simon**; (Similar to CS/H 00141) Economic Development

Tab 3	**CS/SB 208** by **CJ, Burgess (CO-INTRODUCERS) Perry**; (Identical to CS/H 00801) Alzheimer's Disease and Related Dementia Training for Law Enforcement Officers

372730	A	S	RCS	FP, Burgess	Delete L.32:	02/16 01:41 PM

Tab 4	**CS/CS/SB 340** by **RI, CJ, Yarborough**; (Similar to CS/CS/CS/H 00275) Offenses Involving Critical Infrastructure

572674	A	S	RCS	FP, Yarborough	Delete L.28 - 111:	02/16 01:41 PM

Tab 5	**CS/SB 356** by **CM, Avila**; (Compare to CS/H 01255) Notaries Public

Tab 6	**CS/SB 434** by **TR, Harrell**; (Compare to CS/CS/H 00403) Specialty License Plates/Margaritaville

246656	D	S	RCS	FP, Harrell	Delete everything after	02/16 04:29 PM
300232	AA	S	RCS	FP, Hutson	btw L.137 - 138:	02/16 04:29 PM
927578	AA	S	RCS	FP, Harrell	Delete L.249:	02/16 04:29 PM

Tab 7	**CS/SB 476** by **JU, Grall**; (Identical to CS/H 00651) Civil Liability for the Wrongful Death of an Unborn Child

917114	A	S	RCS	FP, Grall	btw L.45 - 46:	02/16 04:28 PM

Tab 8	**SB 480** by **DiCeglie**; (Compare to CS/H 00683) Renewable Natural Gas

499090	D	S	RS	FP, DiCeglie	Delete everything after	02/16 01:58 PM
360380	SD	S	RCS	FP, DiCeglie	Delete everything after	02/16 01:58 PM

Tab 9	**CS/SB 532** by **BI, Brodeur**; (Similar to CS/CS/H 00311) Securities

793480	A	S	RCS	FP, Brodeur	Delete L.349 - 1905:	02/16 01:41 PM

Tab 10	**SB 570** by **Burgess (CO-INTRODUCERS) Grall**; (Identical to H 00353) Alternative Headquarters for District Court of Appeal Judges

Tab 11	**CS/SB 640** by **TR, Berman**; (Identical to H 00937) Purple Alert

Tab 12	**CS/SB 676** by **RI, Bradley**; (Similar to CS/H 01099) Food Delivery Platforms

Tab 13	**CS/CS/SB 738** by **JU, EN, Burgess**; (Compare to CS/CS/H 00789) Environmental Management

399108	A	S	RCS	FP, Berman	Delete L.73 - 122.	02/16 01:42 PM

Tab 14	**CS/SB 754** by **TR, DiCeglie**; (Similar to CS/H 00405) Regulation of Commercial Motor Vehicles

Tab 15	**CS/SB 768** by **HP, Stewart**; (Identical to CS/H 01653) Duties and Prohibited Acts Associated with Death

Tab 16	**SB 818** by **Avila (CO-INTRODUCERS) Collins**; (Similar to H 00765) Military Leave

Tab 17	**CS/SB 830** by **HP, Collins (CO-INTRODUCERS) Simon**; (Identical to CS/H 00865) Youth Athletic Activities

645726	A	S	RCS	FP, Collins	Before L.12:	02/16 04:29 PM

Tab 18	**CS/SB 846** by **BI, DiCeglie**; (Similar to CS/H 00215) Risk Retention Groups

Tab 19	**SB 896** by **Martin**; (Similar to CS/CS/H 00197) Health Care Practitioners and Massage Therapy

320058	A	S	RCS	FP, Martin	btw L.420 - 421:	02/16 02:00 PM

Tab 20	**CS/CS/SB 902** by **CM, BI, Boyd**; (Similar to CS/CS/H 00605) Motor Vehicle Retail Financial Agreements

Tab 21	**CS/CS/SB 996** by **AED, ED, Burgess**; (Similar to CS/CS/1ST ENG/H 01285) Education

119110	A	S	RCS	FP, Burgess	Delete L.289 - 390:	02/16 02:01 PM
417764	A	S	RCS	FP, Burgess	Delete L.607 - 612:	02/16 02:01 PM
396512	A	S	RCS	FP, Burgess	Delete L.963 - 1063:	02/16 02:01 PM

Tab 22	**CS/SB 1140** by **RI, Burton**; (Similar to CS/CS/H 00613) Mobile Homes

336002	A	S	RCS	FP, Burton	Delete L.174 - 244.	02/16 04:29 PM

Tab 23	**CS/SB 1188** by **HP, Garcia**; (Similar to H 01561) Office Surgeries

148378	D	S		FP, Garcia	Delete everything after	02/14 11:37 AM
958154	AA	S		FP, Garcia	Delete L.723:	02/14 04:26 PM
107010	AA	S		FP, Garcia	btw L.1108 - 1109:	02/15 11:34 AM

Tab 24	**SB 1190** by **Ingoglia**; (Identical to H 01131) Online Sting Operations Grant Program

Tab 25	**CS/SB 1356** by **CJ, Calatayud**; (Similar to CS/CS/H 01473) School Safety

Tab 26	**SB 1512** by **Brodeur**; (Identical to H 01595) Controlled Substances

Tab 27	**CS/SB 1604** by **CJ, Book**; (Similar to CS/CS/H 01389) Digital Voyeurism

284842	A	S	RCS	FP, Book	Delete L.124:	02/16 01:42 PM

Tab 28	**CS/SB 1622** by **BI, Trumbull**; (Similar to CS/H 01611) Insurance

Tab 29	**SB 1638** by **Hutson**; (Compare to CS/H 01417) Funding for Environmental Resource Management

821044	D	S	RCS	FP, Hutson	Delete everything after	02/16 01:53 PM

Tab 30	**CS/SB 1716** by **BI, Boyd**; (Similar to CS/H 01503) Citizens Property Insurance Corporation

Tab 35	**SPB 7064** by **FP**; Federal Budget Line Item Veto

Tab 36	**SPB 7066** by **FP**; Equal Application of the Law

Tab 31	**CS/HB 1** by **JDC, Sirois, McFarland, Rayner (CO-INTRODUCERS) Anderson, Bankson, Beltran, Black, Cassel, Chamberlin, Chambliss, Fine, Garcia, Jacques, Massullo, Melo, Mooney, Overdorf, Payne, Plakon, Plasencia, Rizo, Salzman, Tant, Temple, Trabulsy, Tramont, Waldron**; (Similar to CS/S 01788) Social Media Use for Minors

969436	D	S	RS	FP, Hutson	Delete everything after	02/16 01:50 PM
243784	D	S	FAV	FP, Hutson	Delete everything after	02/16 01:50 PM

Tab 32	**CS/CS/HB 3** by **JDC, RRS, Tramont, Overdorf (CO-INTRODUCERS) Bankson, Beltran, Jacques, Lopez, V., Melo, Plakon, Plasencia, Salzman, Temple, Yarkosky, Yeager**; (Identical to CS/S 01792) Online Access to Materials Harmful to Minors

493094	D	S		FP, Hutson	Delete everything after	02/14 12:00 PM

Tab 33	**CS/HB 1377** by **SAC, Sirois, McFarland**; (Similar to S 01790) Pub. Rec./Investigations by the Department of Legal Affairs

698496	D	S	FAV	FP, Hutson	Delete everything after	02/16 01:48 PM
~~262170~~	A	S	WD	FP, Hutson	Delete L.20:	02/16 01:48 PM

Tab 34	**CS/CS/HB 1491** by **SAC, RRS, Tramont, Overdorf**; (Similar to S 01794) Pub. Rec./Investigations by the Department of Legal Affairs

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

FISCAL POLICY
Senator Hutson, Chair
Senator Stewart, Vice Chair

MEETING DATE: Thursday, February 15, 2024
TIME: 12:00 noon—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Hutson, Chair; Senator Stewart, Vice Chair; Senators Albritton, Berman, Boyd, Burton, Calatayud, Collins, DiCeglie, Garcia, Jones, Mayfield, Osgood, Rodriguez, Simon, Thompson, Torres, Trumbull, Wright, and Yarborough

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 84** Transportation / Book (Identical H 91)	Transportation Facility Designations/Jimmy Buffett Highway; Providing an honorary designation of a certain transportation facility in specified counties; directing the Department of Transportation to erect suitable markers by a specified date, etc. TR 01/10/2024 Fav/CS ATD 01/24/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
2	**CS/SB 196** Appropriations Committee on Transportation, Tourism, and Economic Development / Simon (Similar CS/H 141)	Economic Development; Deleting the requirement that certain grants received by a regional economic development organization must be matched in a certain manner; removing a provision requiring a certain consideration; removing certain demonstration requirements of program applicants, etc. CM 12/05/2023 Favorable ATD 01/11/2024 Fav/CS FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
3	**CS/SB 208** Criminal Justice / Burgess (Identical CS/H 801)	Alzheimer's Disease and Related Dementia Training for Law Enforcement Officers; Requiring the Department of Law Enforcement to establish an online, continued employment training component relating to Alzheimer's disease and related forms of dementia; requiring that the training component be developed with the Department of Elder Affairs; authorizing the completion of such training to count toward a certain requirement, etc. CJ 01/23/2024 Fav/CS ACJ 02/08/2024 Favorable FP 02/15/2024 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/CS/SB 340** Regulated Industries / Criminal Justice / Yarborough (Similar CS/CS/CS/H 275)	Offenses Involving Critical Infrastructure; Providing criminal penalties for improperly tampering with critical infrastructure resulting in specified monetary damage or cost to restore; providing criminal penalties for trespass upon critical infrastructure; providing notice requirements; providing criminal penalties for the unauthorized access to or tampering with specified electronic devices or networks of critical infrastructure, etc. CJ 01/10/2024 Fav/CS RI 01/29/2024 Fav/CS FP 02/15/2024 Fav/CS	Fav/CS Yeas 16 Nays 0
5	**CS/SB 356** Commerce and Tourism / Avila (Compare CS/H 1255)	Notaries Public; Requiring that certain notarial certificates contain the printed names of specified individuals; prohibiting a notary public from falsely notarizing the signature of a person who is not in that notary public's presence, either in person or online; deleting a provision that prohibits a notary public from notarizing a signature on a document of a person who is not, at the time of the notarial act, physically present or present by means of audio-video communication technology and that provides civil penalties; requiring a notary public to keep at least one tangible journal; requiring the Department of State to retain jurisdiction over the journal records for a specified timeframe for a certain purpose, etc. CM 01/23/2024 Fav/CS ATD 02/08/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
6	**CS/SB 434** Transportation / Harrell (Compare CS/CS/H 403)	Specialty License Plates/Margaritaville; Directing the Department of Highway Safety and Motor Vehicles to develop a Margaritaville license plate; providing for distribution of fees collected from the sale of the plate, etc. TR 01/10/2024 Fav/CS ATD 01/24/2024 Favorable FP 02/15/2024 Fav/CS	Fav/CS Yeas 16 Nays 0
7	**CS/SB 476** Judiciary / Grall (Identical CS/H 651)	Civil Liability for the Wrongful Death of an Unborn Child; Revising the definition of the term "survivors" to include the parents of an unborn child; prohibiting a right of action against the mother for the wrongful death of an unborn child; authorizing parents of an unborn child to recover certain damages, etc. JU 02/05/2024 Fav/CS FP 02/15/2024 Fav/CS RC	Fav/CS Yeas 10 Nays 6

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 480** DiCeglie (Compare CS/H 683)	Renewable Natural Gas; Authorizing a public utility to recover prudently incurred renewable natural gas infrastructure project costs through an appropriate Florida Public Service Commission cost-recovery mechanism; specifying eligible renewable natural gas infrastructure projects; revising the required contents of a basin management action plan for an Outstanding Florida Spring to include identification of certain water quality improvement projects; encouraging counties and municipalities to develop regional solutions to certain energy issues; authorizing the farm-to-fuel initiative to address the production and capture of renewable natural gas, etc. RI 01/09/2024 Favorable AEG 01/17/2024 Favorable FP 02/15/2024 Fav/CS	Fav/CS Yeas 16 Nays 0
9	**CS/SB 532** Banking and Insurance / Brodeur (Similar CS/CS/H 311)	Securities; Revising the list of securities that are exempt from registration requirements under certain provisions; revising provisions relating to a certain registration exemption for certain securities transactions; updating the federal laws or regulations with which the offer or sale of securities must be in compliance; requiring that offers and sales of securities be in accordance with certain federal laws and rules; providing that registration exemptions under certain provisions are not available to issuers for certain transactions under specified circumstances; specifying criteria for determining integration of offerings for the purpose of registration or qualifying for a registration exemption; specifying the purpose of the Securities Guaranty Fund, etc. BI 01/16/2024 Fav/CS AEG 02/08/2024 Favorable FP 02/15/2024 Fav/CS	Fav/CS Yeas 17 Nays 0
10	**SB 570** Burgess (Identical H 353)	Alternative Headquarters for District Court of Appeal Judges; Authorizing a district court of appeal judge to have an appropriate facility in a county adjacent to his or her county of residence as the judge's official headquarters; authorizing subsistence and travel reimbursement to such judges, etc. JU 01/16/2024 Favorable ACJ 02/08/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 640** Transportation / Berman (Identical H 937)	Purple Alert; Requiring local law enforcement agencies to develop policies for a local activation of a Purple Alert for certain missing adults; specifying duties of the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse in the event of a state Purple Alert; specifying conditions under which a local law enforcement agency may request the clearinghouse to open a case, etc. TR 01/17/2024 Fav/CS ACJ 02/08/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
12	**CS/SB 676** Regulated Industries / Bradley (Similar CS/H 1099)	Food Delivery Platforms; Prohibiting food delivery platforms from taking or arranging for the delivery or pickup of orders from a food service establishment without the food service establishment's consent; requiring food delivery platforms to provide food service establishments with a method of contacting and responding to consumers by a specified date; providing circumstances under which a food delivery platform must remove a food service establishment's listing on its platform; preempting regulation of food delivery platforms to the state, etc. RI 01/22/2024 Fav/CS AEG 02/08/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
13	**CS/CS/SB 738** Judiciary / Environment and Natural Resources / Burgess (Compare CS/CS/H 789, S 406)	Environmental Management; Requiring that nonindustrial stormwater management systems be designed with side slopes that meet certain minimum design requirements; revising construction relating to causes of action for damages to real or personal property directly resulting from certain discharges or other conditions of pollution; requiring the department and water management districts to conduct holistic reviews of their respective agency's coastal permitting processes and permit programs, etc. EN 01/10/2024 Fav/CS JU 01/29/2024 Fav/CS FP 02/15/2024 Fav/CS	Fav/CS Yeas 13 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**CS/SB 754** Transportation / DiCeglie (Similar CS/H 405)	Regulation of Commercial Motor Vehicles; Revising federal regulations to which owners and operators of certain commercial motor vehicles are subject; charging the Department of Highway Safety and Motor Vehicles with the administration and enforcement of certain federal regulations; prohibiting the department from issuing a commercial motor vehicle license to a person who is ineligible under certain federal regulations; applying a reinstatement service fee to a person whose privilege to operate a commercial vehicle has been downgraded, etc. TR 01/10/2024 Fav/CS ATD 01/24/2024 Temporarily Postponed ATD 02/08/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 16 Nays 0
15	**CS/SB 768** Health Policy / Stewart (Identical CS/H 1653)	Duties and Prohibited Acts Associated with Death; Authorizing that a report regarding specified deaths and circumstances be made to a certain law enforcement agency in addition to the district medical examiner; increasing the criminal penalty for persons who fail or refuse to report a death or who refuse to make available certain information with the intent to conceal the death or alter the evidence and circumstances surrounding the death, etc. CJ 01/16/2024 Favorable HP 02/06/2024 Fav/CS FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
16	**SB 818** Avila (Similar H 765)	Military Leave; Providing that public officials and employees of the state, a county, a municipality, or a political subdivision, respectively, are entitled to their full pay for the first 30 days of military service, if such service is equal to or greater than a specified timeframe, etc. MS 01/16/2024 Favorable CA 02/06/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
17	**CS/SB 830** Health Policy / Collins (Identical CS/H 865, Compare H 1479, S 1776)	Youth Athletic Activities; Revising the requirements for certain athletic coaches to include certification in cardiopulmonary resuscitation, first aid, and the use of an automatic external defibrillator; providing requirements for such certification, etc. HP 01/30/2024 Fav/CS AHS 02/08/2024 Favorable FP 02/15/2024 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**CS/SB 846** Banking and Insurance / DiCeglie (Similar CS/H 215)	Risk Retention Groups; Revising the definition of the term "motor vehicle liability policy" to include policies of liability insurance issued by certain risk retention groups, etc. BI 01/16/2024 Fav/CS AEG 02/08/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 16 Nays 0
19	**SB 896** Martin (Similar CS/CS/H 197)	Health Care Practitioners and Massage Therapy; Requiring that a certain annual report required of the Department of Health include specified data; requiring the department to immediately suspend the license of massage therapists and massage establishments under certain circumstances; revising quorum requirements for the Board of Massage Therapy; prohibiting sexual activity and certain related activities in massage establishments; revising advertising requirements and prohibitions for massage therapists and massage establishments; requiring the department's investigators to request valid government identification from all employees while in a massage establishment, etc. HP 01/30/2024 Favorable AHS 02/08/2024 Favorable FP 02/15/2024 Fav/CS	Fav/CS Yeas 17 Nays 0
20	**CS/CS/SB 902** Commerce and Tourism / Banking and Insurance / Boyd (Similar CS/H 605)	Motor Vehicle Retail Financial Agreements; Revising the definition of the term "guaranteed asset protection product"; requiring entities to refund the portions of the purchase price of the contract for a guaranteed asset protection product under certain circumstances; creating the "Florida Vehicle Value Protection Agreements Act"; authorizing the offer, sale, or gift of vehicle value protection agreements in compliance with a certain act, etc. BI 01/16/2024 Fav/CS CM 01/30/2024 Fav/CS FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
21	**CS/CS/SB 996** Appropriations Committee on Education / Education Pre-K -12 / Burgess (Similar CS/CS/H 1285, Compare CS/H 1151, CS/H 7039, S 634, S 1444, CS/S 7004)	Education; Providing that an annual application for exemption on property used to house a charter school is not required; authorizing private schools to use or purchase specified facilities; providing responsibilities for approved virtual instruction program providers, virtual charter schools, and school districts relating to statewide assessments and progress monitoring for certain students; establishing the Purple Star School District Program, etc. ED 01/30/2024 Fav/CS AED 02/08/2024 Fav/CS FP 02/15/2024 Fav/CS	Fav/CS Yeas 11 Nays 5

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/SB 1140** Regulated Industries / Burton (Similar CS/CS/H 613)	Mobile Homes; Requiring that a petition for mediation be filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to determine the adequacy and conformance of the homeowners' petition to initiate mediation; authorizing parties to disputes to jointly select a mediator and initiate mediation proceedings; requiring that specified live-in health care aides have ingress and egress to and from a mobile home owner's site without having to pay charges, etc. RI 01/29/2024 Fav/CS FP 02/15/2024 Fav/CS	Fav/CS Yeas 17 Nays 0
23	**CS/SB 1188** Health Policy / Garcia (Similar H 1561)	Office Surgeries; Revising the types of procedures for which a medical office must register with the Department of Health to perform office surgeries; specifying notification and inspection procedures for the department and the Agency for Health Care Administration if, during the registration process, the department determines that the performance of specified procedures in the office would create a risk to patient safety such that the office should instead be regulated as an ambulatory surgical center; revising standards of practice for office surgeries; requiring medical offices already registered with the department to perform certain office surgeries as of a specified date to reregister if such offices perform specified procedures, etc. HP 02/06/2024 Fav/CS FP 02/15/2024 Temporarily Postponed	Temporarily Postponed
24	**SB 1190** Ingoglia (Identical H 1131)	Online Sting Operations Grant Program; Creating the Online Sting Operations Grant Program within the Department of Law Enforcement to support local law enforcement agencies in creating certain sting operations to protect children; requiring the department to annually award grant funds to local law enforcement agencies; authorizing the department to establish criteria and set specific time periods for the acceptance of applications and the selection process for awarding grant funds, etc. CJ 01/23/2024 Favorable ACJ 02/08/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/SB 1356** Criminal Justice / Calatayud (Similar CS/CS/H 1473, Compare CS/H 1509, Linked S 7056)	School Safety; Providing that sheriffs are responsible for screening-related costs for school guardian programs; authorizing sheriffs to waive training and screening-related costs for a private school for a school guardian program; requiring the Department of Law Enforcement to maintain a list of school guardians and provide the list to any School Safety Specialist upon request; providing requirements for the list; requiring each sheriff to report on a quarterly basis to the Department of Law Enforcement the schedule for school guardian trainings, etc. ED 01/17/2024 Favorable CJ 02/06/2024 Fav/CS FP 02/15/2024 Favorable	Favorable Yeas 16 Nays 0
26	**SB 1512** Brodeur (Identical H 1595)	Controlled Substances; Adding tianeptine to the list of Schedule I controlled substances, etc. CJ 01/30/2024 Favorable ACJ 02/08/2024 Favorable FP 02/15/2024 Favorable	Favorable Yeas 17 Nays 0
27	**CS/SB 1604** Criminal Justice / Book (Similar CS/CS/H 1389)	Digital Voyeurism; Redesignating the offense of "video voyeurism" as "digital voyeurism"; providing reduced criminal penalties for certain violations by persons who are under 19 years of age; redesignating the offense of "video voyeurism dissemination" as "digital voyeurism dissemination", etc. CJ 02/06/2024 Fav/CS FP 02/15/2024 Fav/CS	Fav/CS Yeas 17 Nays 0
28	**CS/SB 1622** Banking and Insurance / Trumbull (Similar CS/H 1611, Compare H 1015)	Insurance; Revising the entities for which the Office of Insurance Regulation is required to conduct market conduct examinations; requiring insurers and insurer groups to file a specified supplemental report on a monthly basis; authorizing the Financial Services Commission to adopt rules related to notice of nonrenewal of residential property insurance policies; revising the requirements for public housing authority self-insurance funds; prohibiting insurers from canceling or nonrenewing certain insurance policies under certain circumstances, etc. BI 01/29/2024 Fav/CS AEG 02/08/2024 Favorable FP 02/15/2024 Temporarily Postponed	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
29	**SB 1638** Hutson (Compare H 1417)	Funding for Environmental Resource Management; Creating, subject to appropriation, the Local Trail Management Grant Program within the Department of Environmental Protection for a specified purpose; requiring the Department of Revenue to distribute, on a monthly basis, a specified percentage of the revenue share payments received under the 2021 gaming compact; creating the Water Quality Work Program within the Department of Environmental Protection, etc. AEG 01/24/2024 Favorable FP 02/15/2024 Fav/CS	Fav/CS Yeas 16 Nays 0
30	**CS/SB 1716** Banking and Insurance / Boyd (Similar CS/H 1503, Compare H 1213)	Citizens Property Insurance Corporation; Providing that certain accounts for Citizens Property Insurance Corporation revenues, assets, liability, losses, and expenses are now maintained as the Citizens account; revising the requirements for certain coverages by the corporation; deleting provisions relating to emergency assessments upon determination of projected deficits; deleting provisions relating to funds available to the corporation as sources of revenue and bonds; revising eligibility for commercial lines residential risks coverage by the corporation, etc. BI 01/22/2024 Temporarily Postponed BI 01/29/2024 Fav/CS FP 02/15/2024 Temporarily Postponed	Temporarily Postponed
31	**CS/HB 1, 1st Eng.** Judiciary Committee / Sirois / McFarland / Rayner (Similar CS/S 1788, Compare CS/CS/H 3, H 207, S 454, S 1430, S 1790, CS/S 1792, Linked CS/H 1377)	Social Media Use for Minors; Requires social media platforms to prohibit minors from creating new accounts, terminate accounts & provide additional options for termination of such accounts, use reasonable age verification methods to verify ages of account holders, & disclose specified policies & provide specified resources, measures, & disclaimers; authorizes DLA to bring actions for violations under Florida Deceptive & Unfair Trade Practices Act; provides penalties; provides for private causes of actions; provides certain social media platforms are subject to jurisdiction of state courts. FP 02/15/2024 Fav/1 Amendment	Fav/1 Amendment (243784) Yeas 12 Nays 5

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
32	**CS/CS/HB 3** Judiciary Committee / Regulatory Reform & Economic Development Subcommittee / Tramont / Overdorf (Identical CS/S 1792, Compare CS/H 1, H 207, S 454, S 1430, CS/S 1788, S 1794, Linked CS/CS/H 1491)	Online Access to Materials Harmful to Minors; Requires commercial entity that publishes or distributes material harmful to minors on websites & applications to perform reasonable age verification, prevent certain access, & provide for reporting unauthorized or unlawful access; prohibits retention of personal identifying information; authorizes DLA to bring action under Florida Deceptive & Unfair Trade Practices Act for violations; provides civil penalties; provides for private causes of action; provides certain commercial entities are subject to jurisdiction of state courts. FP 02/15/2024 Temporarily Postponed	Temporarily Postponed
33	**CS/HB 1377, 1st Eng.** State Affairs Committee / Sirois / McFarland (Similar S 1790, Compare CS/S 1788, Linked CS/H 1)	Pub. Rec./Investigations by the Department of Legal Affairs; Provides exemption from public records requirements for information relating to investigations by DLA of certain social media violations; authorizes DLA to disclose such information for specified purposes; provides for future legislative review & repeal of exemption; provides statement of public necessity. FP 02/15/2024 Fav/1 Amendment	Fav/1 Amendment (698496) Yeas 14 Nays 3
34	**CS/CS/HB 1491** State Affairs Committee / Regulatory Reform & Economic Development Subcommittee / Tramont / Overdorf (Similar S 1794, Compare CS/S 1792, Linked CS/CS/H 3)	Pub. Rec./Investigations by the Department of Legal Affairs; Provides exemption from public records requirements for information relating to investigations by DLA of certain age verification violations; authorizes DLA to disclose such information for specified purposes; provides for future legislative review & repeal of exemption; provides statement of public necessity. FP 02/15/2024 Temporarily Postponed	Temporarily Postponed
	Consideration of proposed bill:		
35	**SPB 7064**	Federal Budget Line Item Veto; Applying to the Congress of the United States to call a constitutional convention for the sole purpose of proposing an amendment to the Constitution of the United States which would authorize the President of the United States to eliminate one or more items of appropriation while approving other portions of a bill, etc.	Submitted and Reported Favorably as Committee Bill Yeas 12 Nays 4
	Consideration of proposed bill:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
36	**SPB 7066**	Equal Application of the Law; Applying to the Congress of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States stating that the United States Congress shall make no law applying to the citizens of the United States that does not also equally apply to all United States Representatives, United States Senators, and all members of the federal legislative branch, etc.	Submitted and Reported Favorably as Committee Bill Yeas 12 Nays 4
	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 Fiscal Policy

BILL:	CS/SB 84
INTRODUCER:	Transportation Committee and Senators Book and Stewart
SUBJECT:	Transportation Facility Designations/Jimmy Buffett Highway
DATE:	February 13, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Vickers	TR	**Fav/CS**
2.	Nortelus	Jerrett	ATD	**Favorable**
3.	Johnson	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 84 designates those portions of State Road A1A located in Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Brevard, Volusia, Flagler, St. Johns, Duval, and Nassau Counties as "Jimmy Buffett Memorial Highway" and directs the Florida Department of Transportation (FDOT), by August 30, 2024, to erect suitable markers.

The estimated cost to FDOT to install the designation markers required under the bill is $23,400. See the "Fiscal Impact Statement" below for details.

The bill takes effect upon becoming a law.

II. Present Situation:

Section 334.071, F.S., provides that legislative designations of transportation facilities are for honorary or memorial purposes or to distinguish a particular facility. Such designations may not be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.[1]

[1] Section 334.071(1), F.S.

When the Legislature establishes road or bridge designations, the FDOT is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation and to erect any other markers it deems appropriate for the transportation facility.[2]

FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations before the installation of the markers.[3]

Jimmy Buffett

Jimmy Buffett was a music performer, with hits such as "Margaritaville," "Come Monday," and "It's Five O'Clock Somewhere." He had a second career as a successful author with both fiction and non-fiction best-sellers. His third career as an entrepreneur, building a diversified lifestyle brand business, including Margaritaville hotels, restaurants, and retirement communities. Jimmy Buffett was born on December 25, 1946, and passed away on September 1, 2023.[4]

III. Effect of Proposed Changes:

The bill creates an undesignated section of Florida law designating those portions of State Road A1A located in Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Brevard, Volusia, Flagler, St. Johns, Duval, and Nassau Counties as "Jimmy Buffett Memorial Highway" and directs FDOT, by August 30, 2024, to erect suitable markers.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[2] Section 334.071(2), F.S.
[3] Section 334.071(3), F.S.
[4] Jimmy Buffett Obituary available at https://www.jimmybuffett.com/obituary (last visited December 15, 2023).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Assuming one designation marker in each direction in each county along State Road A1A, FDOT's estimated cost to erect the designation markers required under this bill is $23,400, based on the cost of two markers in each of 13 counties at $900 each. This estimate includes labor, materials, manufacturing, and installation. FDOT is expected to absorb the estimated cost within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires FDOT to erect the suitable markers designating the Jimmy Buffett Memorial Highway by August 30, 2024. However, s. 334.071, F.S., provides that the erection of markers is contingent on the appropriate city or county passing a resolution supporting the designation, and if the designation is in multiple cities or counties, each affected local government must pass the resolution. The bill names 13 counties and will also require resolutions supporting the designation from each municipality along State Road A1A.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

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 Transportation on January 10, 2023:
The committee substitute:

- Designates S.R. A1A through the entire length of the state as the Jimmy Buffett Memorial Highway.
- Requires the FDOT to erect the suitable markers by August 30, 2024.

- Changes the effective date of the bill to upon becoming a law.

B. Amendments:

None.

By the Committee on Transportation; and Senators Book and Stewart

596-02009-24 202484c1

A bill to be entitled

An act relating to transportation facility designations; providing an honorary designation of a certain transportation facility in specified counties; directing the Department of Transportation to erect suitable markers by a specified date; providing an effective date.

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

Section 1. Jimmy Buffett Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) All of those portions of State Road A1A located in Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Brevard, Volusia, Flagler, St. Johns, Duval, and Nassau Counties are designated as the "Jimmy Buffett Memorial Highway."

(2) By August 30, 2024, the Department of Transportation is directed to erect suitable markers designating the Jimmy Buffett Memorial Highway as described in subsection (1).

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

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

SB 84 C1
Bill Number or Topic

FISCAL POLICY
Committee

Amendment Barcode (if applicable)

Name SAVANNAH BUFFETT

Phone 305 793 1244

Address 644 NE 57TH AVE
Street

Email SJBUFFETT@me.com

MIAMI FL 33137
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:

JIMMY BUFFETT HIGHWAY A1A Designation

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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 196
INTRODUCER:	Appropriations Committee on Transportation, Tourism, and Economic Development Committee and Senator Simon
SUBJECT:	Economic Development
DATE:	February 13, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	**Favorable**
2.	Nortelus	Jerrett	ATD	**Fav/CS**
3.	Renner	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 196 amends the Regional Rural Development Grants Program to:

- Eliminate the rural matching requirement;
- Eliminate the requirement that grant funds received by a regional economic development organization must be matched each year by nonstate resources in an amount equal to 25 percent of the state contributions;
- Remove the requirement that the Department of Commerce (DCM) consider the demonstrated need of the applicant for assistance when approving participants for the program; and
- Remove the requirement that an applicant must show proof that each local government and the private sector made a financial or in-kind commitment to the regional organization in order to receive funding.

Additionally, the bill allows Triumph Gulf Coast, Inc., to retain interest earned on the funds in its trust account rather than having those funds revert to the Triumph Gulf Coast Trust Fund. The funds are required to be used to make awards or pay for administrative costs.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2024.

II. Present Situation:

Regional Rural Development Grants Program

The Regional Rural Development Grants Program was established to provide funding, through matching grants, to build the professional capacity of regionally based economic development organizations located in rural communities. The concept of building the "professional capacity" of an economic development organization includes hiring professional staff to develop, deliver, and provide economic development professional services. Professional services includes technical assistance, education and leadership development, marketing, and project recruitment.[1]

Applications submitted to the Department of Commerce (DCM) for funding through this program must provide proof:[2]

- Of official commitments of support from each of the units of local government represented by the regional organization;
- That each local government has made a financial or in-kind commitments to the regional organization;
- That the private sector has made financial or in-kind commitment to the regional organization;
- That the regional organization is in existence and actively involved in economic development activities serving the region; and
- Of the manner in which the organization coordinates its efforts with those other local and state organizations.

An organization may receive up to $50,000 a year or $250,000 if located in a rural area of opportunity (RAO).[3] Grants must be matched by an amount of non-state resources equal to 25 percent of the state contribution. The DCM is authorized to spend up to $750,000 each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund to carry out this program.[4]

Rural Area of Opportunity

An RAO is a rural community,[5] or region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[6] An area may also be designated as an RAO if it presents a unique economic development opportunity of regional impact. The designation of an RAO must

[1] Section 288.018(1)(b), F.S.
[2] Section 288.018(2), F.S.
[3] Section 288.018(1)(c), F.S.
[4] Section 288.018(4), F.S.
[5] Section 288.0656(2)(e), F.S., defines a "rural community" as is any county with a population of 75,000 or fewer, any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, a municipality in a county that meets either of the aforementioned criteria, or an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors.
[6] Section 288.0656(2)(d), F.S.

be agreed upon by the DCM, as well as the county and municipal governments to be included in the RAO.[7]

Based on recommendations of the Rural Economic Development Initiative (REDI),[8] the Governor may designate up to three RAOs by executive order.[9] This designation establishes these areas as priority assignments for REDI and allows the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development initiative.

Currently, there are three designated RAO areas:

- Northwest RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and portions of Walton County (the City of Freeport and lands north of the Choctawhatchee Bay and intercoastal waterway).
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay in Palm Beach County and the city of Immokalee in Collier County.
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.[10]

Triumph Gulf Coast, Inc.

Triumph Gulf Coast, Inc., was created in 2013[11] by the Legislature to manage, distribute, and assess the use of certain funds related to the Deepwater Horizon oil spill. Triumph Gulf Coast, Inc., is organized as a nonprofit corporation, administratively housed within the DCM. The corporation is a separate entity from state government and not subject to control, supervision, or direction of the DCM. [12]

Triumph Gulf Coast, Inc., is required to administer the Triumph Gulf Coast Trust Fund and all programs created under the Gulf Coast Economic Corridor Act in a transparent manner and in accordance with all applicable laws, bylaws, or contractual requirements. The corporation is required to monitor, review, and evaluate awardees and related projects or programs. The evaluation process must be used to determine funding priorities and determine whether an award should be reauthorized or terminated. The corporation is also required to maintain a website that provides information related to meetings, issuance of awards, and the status of projects and programs. [13]

[7] Section 288.0656(7)(b), F.S.
[8] Section 288.0656(1)(a), F.S. REDI was established by the Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.
[9] Section 288.0656(7)(a), F.S.
[10] Department of Economic Opportunity, *Rural Areas of Opportunity*, *available at* https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited February 14, 2024). The economic development organizations for these RAOs are named Opportunity Florida, Florida's Heartland Regional Economic Development Initiative, and the North Florida Economic Development Partnership, respectively.
[11] Chapter 2013-39, s. 54, Laws of Fla.
[12] Section 288.8013, F.S.
[13] Section 288.8016, F.S.

Chapter 2023-240, s. 65, Laws of Fla., amended s. 288.8013(3), F.S., to require any interest earned on the funds in the Triumph Gulf Coast Trust Fund account to revert back to the Triumph Gulf Coast Trust Fund in existence on June 30, 2023.

III. Effect of Proposed Changes:

The bill amends s. 288.018, F.S., to specify that funding provided under the Regional Rural Development Grants Program are not matching grants. The bill eliminates the requirement that grant funds received by a regional economic development organization must be matched each year by nonstate resources in an amount equal to 25 percent of the state contributions. The bill also removes the requirement that the DCM consider the demonstrated need of the applicant for assistance when approving participants for the program. The bill removes the requirement that an applicant must show proof that each local government and the private sector made a financial or in-kind commitment to the regional organization in order to receive funding.

Additionally, the bill amends s. 288.8013, F.S., to allow Triumph Gulf Coast, Inc. to retain interest earned on the funds in its trust account rather than having those funds revert to the Triumph Gulf Coast Trust Fund. The funds held are required to be used to make awards or pay for administrative costs.

The bill takes effect July 1, 2024.

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:

The bill does not affect state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.018, 288.8013

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 Appropriations Committee on Transportation, Tourism, and Economic Development on January 11, 2024:
The committee substitute continues Triumph Gulf Coast, Inc. authority to retain interest earned on the funds in its trust account. The funds retained are required to be used to make awards or pay for administrative costs.

B. Amendments:

None.

By the Appropriations Committee on Transportation, Tourism, and Economic Development; and Senator Simon

606-02048-24 2024196c1

A bill to be entitled

An act relating to economic development; reenacting s. 288.8013(3), F.S.; carrying forward the authority of Triumph Gulf Coast, Inc., to retain earnings generated by investments and interest earned; amending s. 288.018, F.S.; deleting the requirement that certain grants received by a regional economic development organization must be matched in a certain manner; removing a provision requiring a certain consideration; removing certain demonstration requirements of program applicants; providing an effective date.

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

Section 1. Notwithstanding the expiration and reversion in section 65 of chapter 2023-240, Laws of Florida, subsection (3) of section 288.8013, Florida Statutes, is reenacted to read:

288.8013 Triumph Gulf Coast, Inc.; creation; funding; investment.—

(3) Triumph Gulf Coast, Inc., shall establish a trust account at a federally insured financial institution to hold funds received from the Triumph Gulf Coast Trust Fund and make deposits and payments. Triumph Gulf Coast, Inc., may invest surplus funds in the Local Government Surplus Funds Trust Fund, pursuant to s. 218.407. Earnings generated by investments and interest of the fund may be retained and used to make awards pursuant to this act or, notwithstanding paragraph (2)(d), for administrative costs, including costs in excess of the cap.

606-02048-24 2024196c1

Administrative costs may include payment of travel and per diem expenses of board members, audits, salary or other costs for employed or contracted staff, including required staff under s. 288.8014(9), and other allowable costs. The annual salary for any employee or contracted staff may not exceed $130,000, and associated benefits may not exceed 35 percent of salary.

Section 2. Paragraphs (b), (c), and (d) of subsection (1) and subsection (2) of section 288.018, Florida Statutes, are amended to read:

288.018 Regional Rural Development Grants Program.—

(1)

(b) The department shall establish a ~~matching~~ grant program to provide funding to regional economic development organizations for the purpose of building the professional capacity of those organizations. Building the professional capacity of a regional economic development organization includes hiring professional staff to develop, deliver, and provide needed economic development professional services, including technical assistance, education and leadership development, marketing, and project recruitment. ~~Matching~~ Grants may also be used by a regional economic development organization to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses.

(c) A regional economic development organization may apply annually to the department for a ~~matching~~ grant. The department is authorized to approve, on an annual basis, grants to such regional economic development organizations. The maximum amount an organization may receive in any year will be $50,000, or

$250,000 for any three regional economic development organizations that serve an entire region of a rural area of opportunity designated pursuant to s. 288.0656(7) if they are recognized by the department as serving such a region.

~~(d) Grant funds received by a regional economic development organization must be matched each year by nonstate resources in an amount equal to 25 percent of the state contribution.~~

(2) In approving the participants, the department shall ~~consider the demonstrated need of the applicant for assistance and~~ require the following:

(a) Documentation of official commitments of support from each of the units of local government represented by the regional organization.

~~(b) Demonstration that each unit of local government has made a financial or in-kind commitment to the regional organization.~~

~~(c) Demonstration that the private sector has made financial or in-kind commitments to the regional organization.~~

(b) ~~(d)~~ Demonstration that the organization is in existence and actively involved in economic development activities serving the region.

(c) ~~(e)~~ Demonstration of the manner in which the organization is or will coordinate its efforts with those of other local and state organizations.

Section 3. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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2/15/24
Meeting Date

Fiscal Policy
Committee

196
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jeff Scala

Phone 850 487 0697

Address 100 S Monroe
Street

Email jscala@flcounties.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 Counties

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/24
Meeting Date

FISCAL POLICY
Committee

1960
Bill Number or Topic

Amendment Barcode (if applicable)

Name MIKE GRISSOM Phone 561-310-4079

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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/CS/SB 208
INTRODUCER:	Fiscal Policy Committee; Criminal Justice Committee; and Senators Burgess and Perry
SUBJECT:	Alzheimer's Disease and Related Dementia Training for Law Enforcement Officers
DATE:	February 16, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	**Fav/CS**
2.	Kolich	Harkness	ACJ	**Favorable**
3.	Wyant	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 208 creates s. 943.17299, F.S., which establishes a continued employment training component related to Alzheimer's disease and related forms of dementia. The Florida Department of Law Enforcement (FDLE) shall establish an online training in consultation with the Department of Elder Affairs. The training must include, but is not limited to:

- Instruction on interacting with persons with Alzheimer's disease or a related form of dementia.
- Instruction on techniques for recognizing behavioral symptoms and characteristics.
- Effective communication.
- Employing the use of alternatives to physical restraints.
- Identifying signs of abuse, neglect, or exploitation.

Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer, correctional officer, or correctional probation officer.

This bill may have an insignificant fiscal impact on the FDLE. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

Chapter 943, F.S., contains a number of specific requirements relevant to law enforcement officer training including training in subjects such as victims assistance,[1] sexual assault investigation,[2] autism spectrum disorder,[3] and others.

Section 943.17296, F.S., requires each certified law enforcement officer to successfully complete training on identifying and investigating elder abuse and neglect as part of the basic recruit training,[4] or continuing education.[5] The training is required to be developed in consultation with the Department of Elder Affairs and the Department of Children and Families and must incorporate instruction on the identification of and appropriate responses for persons suffering from dementia and on identifying and investigating elder abuse and neglect.

Elder abuse training must include instruction of and appropriate responses for persons suffering from dementia and on identifying and investigating elder abuse and neglect.[6] An officer who fails to comply with the elder abuse and neglect training requirements must become an inactive officer. The officer's certification is reactivated when the officer's employing agency provides Criminal Justice Standards and Training Commission (CJSTC) staff with verification that the officer has met the continuing education or training requirement.

Full time, part time, or auxiliary officers must successfully complete 40 hours of continuing education or training every four years.

III. Effect of Proposed Changes:

The bill creates s. 943.17299, F.S., which establishes a continued employment training component related to Alzheimer's disease and related forms of dementia. The FDLE shall establish an online training in consultation with the Department of Elder Affairs. The training must include, but is not limited to:

- Instruction on interacting with persons with Alzheimer's disease or a related form of dementia.
- Instruction on techniques for recognizing behavioral symptoms and characteristics.

[1] Section 943.172, F.S., requires every basic skills course required in order for law enforcement officers, probation officers, and other appropriate correctional staff to obtain initial certification to include a minimum of 4 hours of training in victims' assistance and rights.
[2] Section 943.1724, F.S., requires each basic skills course required for a law enforcement office to obtain initial certification must incorporate culturally responsive, trauma-informed training on interviewing sexual assault victims and investigation of incidents of sexual assault.
[3] Section 943.1727, F.S., requires 40 hours of instruction for continued employment or appointment as a law enforcement officer on training related to autism spectrum disorder, including but not limited to, instruction on the recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and characteristics.
[4] Section 943.13(9), F.S., requires any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer or auxiliary correctional probation officer to complete a commission-approved basic recruit training program.
[5] Section 943.135(1), F.S., requires all officers, as a condition of continued employment, to receive periodic commission-approved continuing training or education. Such continuing training or education is required at the rate of 40 hours every 4 years.
[6] Rule 11B-27.00212 (15) (b), F.A.C.

- Effective communication.
- Employing the use of alternatives to physical restraints.
- Identifying signs of abuse, neglect, or exploitation.

Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer, correctional officer, or correctional probation officer.

The bill takes effect on October 1, 2024.

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:

The bill requires FDLE to establish an online training component relating to Alzheimer's disease and related forms of dementia. According to FDLE, development of the training

curricula will cost approximately $11,000.[7] This cost can be absorbed within current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 934.17299 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/CS by Fiscal Policy on February 15, 2024:
The committee substitute:

- Adds correctional officers and correctional probation officers to the persons who may count the training relating to Alzheimer's disease and related forms of dementia towards the 40 hours of instruction for continued employment.

CS by Criminal Justice on January 23, 2024:
The committee substitute:

- Makes a technical change to correct "Department of Elderly Affairs" to "Department of Elder Affairs."
- Provides an effective date of October 1, 2024.

B. Amendments:

None.

[7] Florida Department of Law Enforcement, *2024 Agency Analysis of SB 208*, October 23, 2023 (on file with the Senate committee on Criminal Justice).

372730

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete line 32

and insert:

appointment as a law enforcement officer, correctional officer, or correctional probation officer required under s.

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

And the title is amended as follows:

Delete line 3

372730

and insert:

dementia training for law enforcement and correctional officers;

By the Committee on Criminal Justice; and Senators Burgess and Perry

591-02398-24 2024208c1

A bill to be entitled

An act relating to Alzheimer's disease and related dementia training for law enforcement officers; creating s. 943.17299, F.S.; requiring the Department of Law Enforcement to establish an online, continued employment training component relating to Alzheimer's disease and related forms of dementia; requiring that the training component be developed with the Department of Elder Affairs; specifying instruction requirements for the training component; authorizing the completion of such training to count toward a certain requirement; providing an effective date.

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

Section 1. Section 943.17299, Florida Statutes, is created to read:

943.17299 Continued employment training relating to Alzheimer's disease and related forms of dementia.—The department shall establish an online, continued employment training component relating to Alzheimer's disease and related forms of dementia. The training component must be developed in consultation with the Department of Elder Affairs and must include, but need not be limited to, instruction on interacting with persons with Alzheimer's disease or a related form of dementia, including instruction on techniques for recognizing behavioral symptoms and characteristics, effective communication, employing the use of alternatives to physical restraints, and identifying signs of abuse, neglect, or

Florida Senate - 2024 **CS for SB 208**

591-02398-24 2024208c1

exploitation. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135.

Section 2. This act shall take effect October 1, 2024.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15
Meeting Date

208
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Alzheimer's Training for LEO

Name Alex Anderson

Job Title

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Street

TLH FL 32303
City *State* *Zip*

Phone 904 502 2506

Email AJAnderson@ALZ.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Alzheimer's Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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

2/15/24-12:00PM
Meeting Date

Fiscal Policy
Committee

208 - Alzheimer's Training
Bill Number or Topic

Amendment Barcode (if applicable)

Name AARP - Karen Murillo

Phone 850-567-0414

Address 215 S. Monroe St., Ste. 603
Street

Email kmurillo@aarp.org

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:
AARP

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/CS/CS/SB 340
INTRODUCER:	Fiscal Policy Committee; Regulated Industries Committee; Criminal Justice Committee; and Senator Yarborough
SUBJECT:	Offenses Involving Critical Infrastructure
DATE:	February 16, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Fav/CS**
2.	Schrader	Imhof	RI	**Fav/CS**
3.	Cellon	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 340 creates s. 812.141, F.S., relating to offenses involving critical infrastructure. The bill creates new felony offenses and provides for civil remedies if a person is found to have improperly tampered with critical infrastructure.

The bill defines "critical infrastructure" to mean any linear asset or any specified entities for which the owner or operator thereof has employed measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, or signs prohibiting trespass.

"Improperly tampers" means to cause, or attempt to cause, significant damage to, or a significant interruption or impairment of a function of, critical infrastructure without permission or authority to do so.

A person commits a second degree felony if he or she knowingly and intentionally improperly tampers with critical infrastructure which results in:

- Damage to such critical infrastructure that is $200 or more; or
- The interruption or impairment of the function of such critical infrastructure which costs $200 or more in labor and supplies to restore.

The bill provides that a person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction of the above described crime is liable to the owner or operator of the critical infrastructure.

A person commits a third degree felony crime of trespass if he or she, without being authorized, licensed, or invited, willfully enters upon or remains upon critical infrastructure as to which notice against entering or remaining in is given.

A person commits a third degree felony if he or she willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized.

A person commits a second degree felony if he or she willfully, knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure.

The bill may have a positive indeterminate fiscal impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Acts of Destruction against Utilities

The National Conference of State Legislatures (NCSL) suggests that states should be aware of and be prepared for actual physical threats perpetrated by humans to energy infrastructure.[1] The U.S. Department of Energy's annual summary of Electric Emergency Incident and Disturbance Reports indicates at least 25 reports were filed as actual physical attacks in electric utilities perpetrated by humans in 2022, compared to six attacks in 2021.[2]

A sample of the attacks to critical infrastructure throughout the country in the last few years includes:

- In September 2022, six separate incidents occurred at Duke Energy substations in Central Florida.[3]

[1] The National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, updated May 22, 2023, available at *www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure* (last visited Jan. 30, 2024).
[2] *Id.;* U.S. Department of Energy, *Office of Cybersecurity, Energy Security, & Emergency Response, Electric Disturbance Events (OE-417) Annual Summaries*, available at https://www.oe.netl.doe.gov/OE417_annual_summary.aspx (last visited Jan 26, 2024).
[3] USA TODAY, *Attacks on power substations are growing. Why is the electric grid so hard to protect?*, Dinah Voyles Pulver, Grace Hauck, December 30, 2022, updated February 8, 2023, available at https://www.usatoday.com/story/news/nation/2022/12/30/power-grid-attacks-increasing/10960265002/ (last visited Jan. 26, 2024).

- In December 2022, 40,000 customers in Monroe County, North Carolina, lost power due to firearm attacks at two substations.[4]
- Additional such attacks – or at least thwarted plans to make them – to critical infrastructure have also occurred in Oregon, South Carolina, and Washington.[5]

Florida Criminal Laws that May Apply to Incidents Involving Intentional Damage of Critical Infrastructure

Although there is no current Florida criminal offense of intentional damage of critical infrastructure, under certain facts, a person may be charged under existing crimes for such damage. These crimes include, in part, the offense of trespass and criminal mischief.

A person commits the crime of trespass on a property other than a structure or conveyance if that person, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation; or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.[6]

Trespass on property other than a structure or conveyance is a first degree misdemeanor offense.[7]

If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she commits a third degree felony.[8,9]

A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti or other acts of vandalism:[10]

- If the damage to such property is $200 or less, it is a misdemeanor of the second degree.[11]

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[4] Utility Dive News, *FBI called to investigate firearms attacks on Duke Energy substations in North Carolina; 40K without power*, Robert Walton, December 4, 2022, available at https://www.utilitydive.com/news/fbi-investigate-firearms-attacks-duke-energy-substations-North-Carolina/637927/ (last visited Jan. 30, 2024).

[5] Koin News, *Memo: Oregon, Washington substations intentionally attacked; Aim is 'violent anti-government activity*,' Elise Haas, December 6, 2022, available at https://www.koin.com/news/oregon/memo-oregon-washington-substations-intentionally-attacked/ (last visited Jan. 26, 2024); WLTX News 19, *South Carolina lawmakers pass power grid protections after attacks, Dominion Energy said the state had 12 of these incidents last year alone*, Becky Budds, March 20, 2023, available at https://www.wltx.com/article/news/politics/state-lawmakers-pass-power-grid-protections/101-a3c290a8-42f5-4915-94aa-533cfbed0db1 (last visited Jan. 26, 2024).

[6] Section 810.09, F.S.

[7] A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.

[8] Section 810.09(2)(c), F.S.

[9] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.

[10] Section 806.13, F.S.

[11] *Id*. A second degree misdemeanor is punishable by up to 60 days in the county jail and a $500 fine. Sections 775.082 and 775.083, F.S.

- If the damage to such property is greater than $200 but less than $1,000, it is a misdemeanor of the first degree.[12]
- If the damage is $1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs $1,000 or more in labor and supplies to restore, it is a felony of the third degree.[13]

Additionally, Florida law specifically criminalizes damage to certain telecommunications equipment. A person who, without the consent of the owner thereof, willfully destroys or substantially damages any public telephone, or telephone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances, which destruction or damage renders a public telephone inoperative or which opens the body of a public telephone, commits a third degree felony.[14]

Section 815.061, F.S., also provides penalties for computer-related crimes against public utilities.[15] The section provides willfully, knowingly, and without authorization:

- Gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized, is a felony of the third degree.[16]
- Physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a public utility, is a felony of the second degree.[17]

Section 815.06, F.S., is also the general cyber-crime statute for Florida. The section provides that it is unlawful to willfully, knowingly, and without authorization or exceeding authorization to:

- Access or cause to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized or the manner of use exceeds authorization;
- Disrupt or deny or cause the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;

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[12] *Id.* A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.

[13] *Id.* A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.

[14] *Id.* A conspicuous notice of the provisions of this subsection and the penalties provided must be posted on or near the destroyed or damaged instrument and visible to the public at the time of the commission of the offense.

[15] "Public utility" for this provision means the same as in s. 366.02, F.S. Under s. 366.02, F.S., a "public utility" is defined "as every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state." There are, however, several exceptions to this definition, which include, "a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; [and] any dependent or independent special natural gas district." Generally, "public utility" means investor-owned utilities.

[16] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.

[17] A second degree felony is punishable by up to 15 years' imprisonment and a fine of up to $10,000. Sections 775.082, 775.083, and 775.084, F.S.

- Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroy, injure, or damage any computer, computer system, computer network, or electronic device;
- Introduce any computer contaminant into any computer, computer system, computer network, or electronic device; or
- Engage in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.[18]

Penalties for violations of s. 815.06, F.S., range from a felony of the third degree[19] to a felony of the first degree,[20] depending on the unlawful act and the severity of the unlawful act.[21] Section 815.06(4), F.S., also provides that "a person who willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device commits a misdemeanor of the first degree."[22] Civil remedies are also provided under the section.

Current Florida Statutes Defining "Critical Infrastructure"

The term "critical infrastructure facility" is currently defined in two sections of Florida law.

In the context of protecting critical infrastructure from a drone's flightpath, s. 330.41, F.S., defines a "critical infrastructure facility" as any of the following, if completely enclosed by a fence or other physical barrier obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- A power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility.
- Any portion of an aboveground oil or gas pipeline.
- A refinery.

[18] Section 815.06(2), F.S.
[19] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[20] A first degree felony is punishable by up to 30 years' incarceration or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment, and a $10,000 fine (or $15,000 for a life felony). Sections 775.082 and 775.083, F.S.
[21] Section 815.06(3), F.S.
[22] Section 815.06(4), F.S.

- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.
- A seaport as listed in s. 311.09(1), F.S., which need not be completely enclosed by a fence or other physical barrier and need not be marked with a sign or signs indicating that entry is forbidden.
- 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.
- An airport as defined in s. 330.27, F.S.
- A spaceport territory as defined in s. 331.303(18), F.S.
- A military installation as defined in 10 U.S.C. s. 2801(c)(4) and an armory as defined in s. 250.01, F.S.
- A dam as defined in s. 373.403(1), F.S., or other structures, such as locks, floodgates, or dikes, which are designed to maintain or control the level of navigable waterways.
- A state correctional institution as defined in s. 944.02, F.S., or a private correctional facility authorized under ch. 957, F.S.
- A secure detention center or facility as defined in s. 985.03, F.S., or a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility as those terms are described in s. 985.03(44), F.S.
- A county detention facility as defined in s. 951.23, F.S.
- A critical infrastructure facility as defined in s. 692.201, F.S.[23]

In Part III, ch. 692, F.S., Conveyances to Foreign Entities, "critical infrastructure facility" means any of the following, if the facility employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

- A chemical manufacturing facility.
- A refinery.
- An electrical power plant as defined in s. 403.031(20), F.S.
- A water treatment facility or wastewater treatment plant.
- A liquid natural gas terminal.
- A telecommunications central switching office.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A seaport as listed in s. 311.09, F.S.
- A spaceport territory as defined in s. 331.303(18), F.S.
- An airport as defined in s. 333.01, F.S.[24]

[23] The "Unmanned Aircraft Systems Act," Section 330.41(1) and (2)(a)1.-20., F.S.
[24] Section 692.201(2), F.S.

Federal Law

Energy Industry

Title 18 U.S.C. s. 1366 is a current federal criminal law that applies in cases of damaging the property of an energy facility.[25] The penalty for a violation of this section is a fine and imprisonment for up to 20 years. If such a violation results in the death of a person, the penalty can rise to a term of life.

"Energy facility" is defined as:

> A facility that is involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities relating thereto, regardless of whether such facility is still under construction or is otherwise not functioning, except a facility subject to the jurisdiction, administration, or in the custody of the Nuclear Regulatory Commission or an interstate gas pipeline facility.[26]

Natural Gas Industry

Title 49 U.S.C. s. 60123(b), provides penalties "for knowingly and willfully damaging or destroying an interstate gas pipeline facility, an interstate hazardous liquid pipeline facility, or either an intrastate gas pipeline facility or intrastate hazardous liquid pipeline facility that is used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, or attempting or conspiring to do such an act." Such an act is punishable by a under the U.S. criminal code, imprisonment for not more than 20 years, or both; and, if death results to any person from such an act, imprisonment of a "term of years or for life."

Public Water Systems

Title 42 U.S.C. s. 300i–1 provides penalties for tampering with public water systems. The section defines "tampering" as:

- Introducing a contaminant into a public water system with the intention of harming persons; or
- Otherwise interfering with the operation of a public water system with the intention of harming persons.[27]

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[25] 18 U.S.C. s. 1366(a), (b), and (d), provide:

> (a) Whoever knowingly and willfully damages or attempts or conspires to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed, or if the object of the conspiracy had been achieved, have exceeded $100,000, or damages or attempts or conspires to damage the property of an energy facility in any amount and causes or attempts or conspires to cause a significant interruption or impairment of a function of an energy facility, shall be punishable by a fine under this title or imprisonment for not more than 20 years, or both.
>
> (b) Whoever knowingly and willfully damages or attempts to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed have exceeded $5,000 shall be punishable by a fine under this title, or imprisonment for not more than five years, or both….
>
> (d) Whoever is convicted of a violation of subsection (a) or (b) that has resulted in the death of any person shall be subject to imprisonment for any term of years or life.

[26] 18 U.S.C. s. 1366(c).

[27] 42 U.S.C. s. 300i–1(d).

The section provides for differing penalties:

- Tampering with a water system: fine or imprisonment of not more than 20 years.
- Attempting or threatening to tamper: fine or imprisonment of not more than 10 years.

The Administrator of the Environmental Protection Agency may also bring a civil action against violators of the section, with civil penalties of not more than $1,000,000 for tampering and $100,000 for attempts or threats to tamper.[28]

Transportation Systems and Carriers

Title 18 U.S.C. s. 1992, provides penalties for terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air. A person who, under qualifying circumstances,[29] knowingly and without lawful authority or permission:

- Wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;
- Places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life;
- Sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near:
  - Certain railroad carrier facilities, and with intent to, or knowing or having reason to know, such activity would likely derail, disable, or wreck railroad on-track equipment; or
  - Certain structures or facilities used in the operation of, or in support of the operation of, a mass transportation vehicle, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider;
- Places or releases a hazardous material or a biological agent or toxin on or near any railroad carrier or mass transportation property described above, with intent to endanger the safety of any person; or with reckless disregard for the safety of human life or commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on railroad carrier or mass transportation property described above;
- Removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal;
- With intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, controlling, or maintaining railroad on-track equipment or a mass transportation vehicle;

[28] 42 U.S.C. s. 300i–1(c).

[29] The qualifying circumstances are that any "of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider, or a railroad carrier engaged in interstate or foreign commerce," or traveling or communicating across a state line to commit the offense, or transporting materials across a state line in aid of the offense. 18 U.S.C. s. 1992(c).

- Surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described above;
- Conveys false information, knowing the information to be false, concerning an attempt or alleged attempt to engage acts above; or
- Attempts, threatens, or conspires to engage in any violation of any of the acts above.

Such acts are punishable by fine and imprisonment of not more than 20 years, or both; and, if death results to any person from certain above acts, imprisonment of a "term of years or for life." Certain aggravated violations of 18 U.S.C. s. 1992, can result in a term of life or be a capital offense.

National Defense

Title 18 U.S. Code s. 2155 provides penalties for destruction of national-defense materials, national-defense premises, or national-defense utilities. Under the section, a person who acts with "intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities" may be fined and "imprisoned not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life."

III. Effect of Proposed Changes:

The bill creates s. 812.141, F.S., relating to offenses involving critical infrastructure. The bill creates new felony offenses and provides for civil remedies if a person is found to have improperly tampered with critical infrastructure.

The bill defines "critical infrastructure" to mean any linear asset or any specified entities for which the owner or operator thereof has employed measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, or signs prohibiting trespass. Specified entities include:

- An electric power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, or storage facility.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- A wireless or wired communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A seaport as listed in s. 311.09, F.S.
- A railroad switching yard, trucking terminal, or other freight transportation facility.
- An airport as defined in s. 330.27, F.S.

- A spaceport territory as defined in s. 331.303, F.S.
- A transmission facility used by a federally licensed radio or television station.
- A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.
- A civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
- A dam as defined in s. 373.403, F.S., or other water control structures, such as locks, floodgates, or dikes, which are designed to maintain or control the level of navigable waterways.

"Linear asset" means any electric distribution or transmission asset, oil or gas distribution or transmission pipeline, communication wirelines, or railway, and any attachments thereto.

"Improperly tampers" means to cause, or attempt to cause, significant damage to, or a significant interruption or impairment of a function of, critical infrastructure without permission or authority to do so.

A person commits a second degree felony[30] if he or she knowingly and intentionally improperly tampers with critical infrastructure which results in:
- Damage to such critical infrastructure that is $200 or more; or
- The interruption or impairment of the function of such critical infrastructure which costs $200 or more in labor and supplies to restore.

The bill provides that a person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction of the above described crime is liable to the owner or operator of the critical infrastructure.

A person commits a third degree felony[31] crime of trespass if he or she, without being authorized, licensed, or invited, willfully enters upon or remains upon critical infrastructure as to which notice against entering or remaining in is given.

A person commits a third degree felony[32] if he or she willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized.

A person commits a second degree felony if he or she willfully, knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure.

[30] A second degree felony is generally punishable by no more than 15 years in state prison and a fine not exceeding $10,000, as provided in s. 775.082 and s. 775.083, F.S.
[31] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[32] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.

The bill is effective July 1, 2024.

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:

The Office of Economic and Demographic Research has provided an estimate which determined that the bill may have a positive indeterminate fiscal impact on the Department of Corrections. A positive indeterminate fiscal impact means that the number of prison beds that may result from the bill is unquantifiable.[33]

VI. Technical Deficiencies:

None.

[33] Office of Economic and Demographic Research, *CS/CS/SB/340*, February 12, 2024 Estimate; available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSCSSB340.pdf (last visited February 14, 2024).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 812.141 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/CS/CS by Fiscal Policy on February 15, 2024:
The committee substitute:

- Removes reference to cyber or digital measures designed to exclude unauthorized persons from the definition of "critical infrastructure."
- Eliminates duplicity and provides clarity by cross-referencing some terms defined in the bill with current law and reorganizing others without diminishing the effect of the bill.
- Revises the definition of "Improperly tampers," to mean to cause, or attempt to cause, significant damage to, or a significant interruption or impairment of a function of, critical infrastructure without permission or authority to do so.
- Provides it is a second degree felony for a person to knowingly and intentionally improperly tamper with critical infrastructure which results in damage that is $200 or more; or the interruption or impairment of the function of such critical infrastructure, which costs $200 or more in labor and supplies to restore.
- Clarifies that a person is liable to the owner or operator of critical infrastructure for damages equal to three times the amount of a claim that the owner or operator is required to pay in cases of property damage, wrongful death, or personal injury.

CS/CS by Regulated Industries on January 29, 2024
The committee substitute:

- Revises the definition of "critical infrastructure" to include all linear assets.
- For other types of critical infrastructure identified in the bill, the amendment also requires that, to be critical infrastructure, facility in question must be one for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multifactor authentication, passwords, or other cybersecurity systems and controls. The amendment adds to this type of facilities all types of pipelines (the underlying bill only included natural gas and compressed gas pipelines); spacecraft; and civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
- Creates a definition for "linear asset," "computer," "computer system," "computer network," and "electronic device."

- Revises what constitutes tampering with critical infrastructure to remove a provision that the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, which may include physical or digital measures, such as fences, barriers, or guard posts, or identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls, and such improper tampering results.
- Revises what constitutes trespass on critical infrastructure to make it when a person willfully enters upon or remains on physical critical infrastructure as to which notice against entering or remaining in is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.
- Requires that for a person to have violated the provision regarding tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to, a computer, a computer system, a computer network, or an electronic device that causes a disruption in any service that they have done so willfully, knowingly, and without authorization.
- Makes technical changes.

CS by Criminal Justice on January 10, 2024:
The committee substitute:

- Amends the definition of "improperly tampers," to clarify that a person must intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:
  - Changing the physical or virtual condition of the property without authorization; or
  - The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure's digital systems.
- Requires proof of resulting damage of $200 or greater if the owner or operator has taken measures to exclude unauthorized persons to prove the second degree felony crime of improperly tampering with critical infrastructure existing in the original bill.
- Expands the list of measures designed to exclude unauthorized persons.
- Creates an additional second degree felony for physically tampering, etc., with a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure.
- Creates a third degree felony of trespass on a critical infrastructure, and specifies the requirements that constitute notice against entering or remaining in a physical critical infrastructure.
- Creates a new third degree felony, for willfully, knowingly, and without authorization gaining access to a computer, etc., owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized.
- Provides for civil damages against a person who is found to have improperly tampered with critical infrastructure.
- Expands the definition of "critical infrastructure" by including additional facilities, etc.
- Removes Section 2 of the bill.
- Makes technical changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Yarborough) recommended the following:

Senate Amendment

Delete lines 28 - 111
and insert:
thereof has employed measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, or signs prohibiting trespass:

a. An electric power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

572674

b. A chemical or rubber manufacturing or storage facility.

c. A mining facility.

d. A natural gas or compressed gas compressor station, or storage facility.

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

f. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

g. A wireless or wired communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.

h. A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.

i. A seaport as listed in s. 311.09.

j. A railroad switching yard, trucking terminal, or other freight transportation facility.

k. An airport as defined in s. 330.27.

l. A spaceport territory as defined in s. 331.303.

m. A transmission facility used by a federally licensed radio or television station.

n. A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.

o. A civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.

p. A dam as defined in s. 373.403, or other water control structures, such as locks, floodgates, or dikes, which are designed to maintain or control the level of navigable

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waterways.

(b) "Improperly tampers" means to cause, or attempt to cause, significant damage to, or a significant interruption or impairment of a function of, critical infrastructure without permission or authority to do so.

(c) "Linear asset" means any electric distribution or transmission asset, oil or gas distribution or transmission pipeline, communication wirelines, or railway, and any attachments thereto.

(2) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she knowingly and intentionally improperly tampers with critical infrastructure which results in:

(a) Damage to such critical infrastructure that is $200 or more; or

(b) The interruption or impairment of the function of such critical infrastructure which costs $200 or more in labor and supplies to restore.

(3) A person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction for a violation of subsection (2) is liable to the owner or operator of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the owner or operator due to any property damage, personal injury, or wrongful death caused by the act or an amount equal to three times any claim the owner or operator was required to pay for any property damage, personal injury, or wrongful death caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

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(4) A person commits the offense of trespass on critical infrastructure, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she, without being authorized, licensed, or invited, willfully enters upon or remains upon critical infrastructure as to which

By the Committees on Regulated Industries; and Criminal Justice; and Senator Yarborough

580-02606-24 2024340c2

A bill to be entitled

An act relating to offenses involving critical infrastructure; creating s. 812.141, F.S.; providing definitions; providing criminal penalties for improperly tampering with critical infrastructure resulting in specified monetary damage or cost to restore; providing for civil liability upon a conviction for such violations; providing criminal penalties for trespass upon critical infrastructure; providing notice requirements; providing criminal penalties for the unauthorized access to or tampering with specified electronic devices or networks of critical infrastructure; providing definitions; providing an effective date.

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

Section 1. Section 812.141, Florida Statutes, is created to read:

812.141 Offenses involving critical infrastructure; improper tampering; civil remedies; trespass on critical infrastructure; computer offenses involving critical infrastructure.—

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

(a) "Critical infrastructure" means:

1. Any linear asset; or

2. Any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to,

580-02606-24 2024340c2

fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multifactor authentication, passwords, or other cybersecurity systems and controls:

a. An electric power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

b. A chemical or rubber manufacturing or storage facility.

c. A mining facility.

d. A natural gas or compressed gas compressor station, storage facility, or pipeline.

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

f. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

g. Any portion of an aboveground oil or gas pipeline.

h. A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including, but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.

i. A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.

j. A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.

k. A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.

l. A transmission facility used by a federally licensed radio or television station.

m. A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.

n. A civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.

o. Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.

p. Dams and other water control structures.

(b) "Improperly tampers" means to knowingly and intentionally cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

1. Changing the physical location or physical or virtual condition of the critical infrastructure, or any portion thereof, without permission or authority to do so;

2. Otherwise moving, damaging, or destroying the critical infrastructure or any portion thereof, without permission or authority to do so; or

3. Accessing without authorization, introducing malware, or taking any other action that compromises the integrity or availability of the critical infrastructure's digital systems.

(c) "Linear asset" means any electric distribution or transmission asset, gas distribution or transmission pipeline, communication wirelines, or railway, and any attachments

thereto.

(2) A person who improperly tampers with critical infrastructure resulting in damage to critical infrastructure that is $200 or more or in the interruption or impairment of the function of critical infrastructure which costs $200 or more in labor and supplies to restore, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction for a violation of subsection (2) is liable to the owner or operator of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the owner or operator due to any property damage, personal injury, or wrongful death, caused by the act or an amount equal to three times any claim made against the owner or operator for any property damage, personal injury, or wrongful death caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

(4) A person commits the offense of trespass on critical infrastructure, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she without being authorized, licensed, or invited, willfully enters upon or remains on physical critical infrastructure as to which notice against entering or remaining in is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011.

(5)(a) A person who willfully, knowingly, and without authorization gains access to a computer, a computer system, a

computer network, or an electronic device that is owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who willfully, knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to, a computer, a computer system, a computer network, or an electronic device that causes a disruption in any service delivered by any critical infrastructure commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) For purposes of this subsection, the terms "computer," "computer system," "computer network," and "electronic device" have the same meanings as in s. 815.03.

Section 2. This act shall take effect July 1, 2024.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

340
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Renee Goode

Job Title Director of Government Relations for JEA

Address 225 N. Pearl St
Street

Phone _____

Jacksonville Fl 32202
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 0340
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jennell Milton - JEA

Phone 904-665-5102

Address 225 N Pearl Street
Street

Email miltjl@jea.com

Jacksonville FL 32202
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: JEA

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/2024
Meeting Date

Fiscal Policy
Committee

CS/CS/SB 340
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nicole Albers

Phone 850 544 5056

Address 417 E College Ave
Street

Email nalbers@flpublicpower.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 Municipal Electric 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/15/24
Meeting Date

FISCAL POLICY
Committee

340
Bill Number or Topic

Amendment Barcode (if applicable)

Name KEVIN NOONAN · ORLANDO UTILITIES COMMISSION Phone 407 466 1287

Address 100 W. ANDERSON ST Email KNOONAN@OUC.COM
Street

ORLANDO FL 32801
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: ORLANDO UTILITIES COMMISSION

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/24	340
Meeting Date	Bill Number or Topic
Fiscal Policy	
Committee	Amendment Barcode (if applicable)

Name Dale Calhoun

Phone 8506810496

Address 201 S Monroe St Unit A
Street

Email dale.calhoun@floridagas.rg

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 Natural Gas 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

340
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Adam Basford

Job Title _____

Address 516 N Adams St
Street

Phone _____

Tallahassee FL 32301
City *State* *Zip*

Email abasford@aif.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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

2 15 24
Meeting Date

Fiscal Policy
Committee

340
Bill Number or Topic

Amendment Barcode (if applicable)

Name Stephan Shiver Port Tampa Bay Phone 850 222 8900

Address 204 S Monroe St Email Stephen@TAPFLA.com
Street

Tall 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:

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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February 15, 2024
Meeting Date

Fiscal Policy
Committee

SB 340
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tiffany Garling - FL Chamber

Phone 850-661-3339

Address 136 S. Bronough Street
Street

Email tgarling@flchamber.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 Chamber of Commerce

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/23
Meeting Date

Fiscal Policy
Committee

340
Bill Number or Topic

Amendment Barcode (if applicable)

Name Casey Reed

Phone (850) 591-6002

Address 150 S. Monroe St
Street

Email CR9243@att.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: AT&T

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 356
INTRODUCER:	Commerce and Tourism Committee and Senator Avila
SUBJECT:	Notaries Public
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Fav/CS**
2.	Wells	Jerrett	ATD	**Favorable**
3.	McMillan	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 356 makes the following changes with respect to notaries public:

- Requires notarial certificates to include the printed name of a person whose signature is being notarized, and printed names of all signatories, including principals and witnesses.
- Prohibits a notary public from falsely notarizing a signature of a person who is not in the presence of a notary public, either in person or online, at the time the signature is notarized.
- Creates criminal penalties for prohibited acts by notaries public, with enhanced penalties for violations pertaining to real estate transactions.

The bill requires notaries public to keep tangible journals of all notarizations performed, specifies duties related to maintaining such journals, and delineates circumstances in which other parties may have access to entries in the journals.

The bill also modifies a provision relating to a recording notification service by clerks of circuit courts, to provide that if a property appraiser receives notice from a property owner or clerk of the circuit court and reasonably determines that a recorded deed is fraudulent, the property appraiser may refuse to update the owner of record on the county's tax rolls. However, the property appraiser must make a notation in their records that a possible conveyance has been recorded.

The bill takes effect July 1, 2024.

II. Present Situation:

Notaries Public in Florida

A notary public is a public officer under the Florida Constitution,[1] and "an impartial agent of the state."[2] As a public officer, notaries public are constitutionally required to give a bond (as required by law) and swear or affirm to uphold the Constitutions of the United States and Florida.[3] Notaries public are appointed and commissioned by the Governor to four-year terms,[4] and are authorized under Florida law to perform six basic duties:[5]

- Administer oaths or affirmations;[6]
- Take acknowledgments;[7]
- Solemnize marriages;[8]
- Attest to photocopies;[9]
- Verify vehicle identification numbers (VINs);[10] and
- Certify the contents of a safe-deposit box.[11]

A notary public may only exercise the foregoing duties within the physical boundaries of the State of Florida.[12] Generally, a notary public may not charge more than $10 per notarial act and may not charge a fee for notarizing a vote-by-mail ballot.[13]

A notary public may provide an electronic signature that is unique, verifiable, under the notary public's sole control, and attached to a document in a way revealing any subsequent alteration.[14] When an electronic signature must be accompanied by a notary public seal, the requirement is met when the notary public includes his or her full name as provided in the notary public's application for commission, the words "Notary Public State of Florida," the expiration date of the notary public's commission, and the notary public's commission number.[15] The seal must also be applied to all notarized paper documents using a rubber stamp containing the foregoing information.[16] The rubber stamp seal must be affixed to the notarized paper document in

[1] Art. II, § 5(c), Fla. Const.
[2] 58 AM. JUR. 2D Notaries Public § 1.
[3] *See* s. 117.01(3) & (7), F.S. ((3) requiring that, as part of oath, the applicant must swear he or she has read ch. 117, F.S., and knows the duties, responsibilities, limitations, and powers of a notary; (7) requiring that notaries give a bond in the amount of $7,500 in the event the notary breaches duties, of which is to be kept on file with the Department of State). Section 117.01(1), F.S., requires a notary to be able to read, write, and understand the English language.
[4] Section 117.01(1), F.S.
[5] Executive Office of the Governor, State of Florida, *Governor's Reference Manual for Notaries Public*, p. 13 (Dec. 13, 2016), *available a*t https://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf (last visited Jan. 24, 2024).
[6] Section 117.03, F.S.
[7] Section 117.04, F.S.
[8] Section 117.045, F.S.
[9] Section 117.05(12)(a), F.S.
[10] Section 319.23(3)(a)2., F.S.
[11] Section 655.94(1), F.S.
[12] Section 117.01(1), F.S.
[13] Section 117.05(2), F.S.
[14] Section 117.021(2), F.S.
[15] Section 117.021(3), F.S.
[16] Section 117.05(3), F.S.

photographically reproducible black ink. Every notary public must print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned.[17]

Additionally, as a public officer, a notary public is held to high standards and is subject to discipline, including suspension by the Governor and removal by the Senate, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.[18] A notary public is also subject to criminal penalties for certain unlawful uses of the notary public commission (such as notarizing his or her own signature),[19] and liable to pay fees for certain civil infractions (such as notarizing a document when the signor is not in the notary public's presence).[20]

Becoming a Notary Public in Florida

In order to be eligible to become a notary public in Florida, a person must:
- Be at least 18 years of age;
- Be a Florida resident or permanent resident alien with a recorded declaration of domicile;
- Maintain Florida residence throughout the appointment; and
- Be able to read, write, and understand the English language.[21]

To apply to be a notary public in Florida, the application form provided by the Department of State must be completed, signed, sworn, and filed along with the appropriate applications fees.[22] Because the bond must be attached, the bonding agency usually submits the application in both a paper and electronic format.[23] The oath of office and notary public bond must accompany the notary public's application when filed with the Department of State.[24] Applicants must also provide the following as part of the application:
- Personal identification information;
- Affidavit of good character from a reference who has known the applicant for at least one year and is not a relative;
- Ten-year history of any licenses and discipline;
- Statement regarding whether the applicant has ever been convicted of a felony or had his or her civil rights restored; and
- Any other information requested by the Governor's office to confirm eligibility.[25]

Notary's Duty to Confirm Identity

One of the notary public's primary duties is to verify the identity of the person who is signing a document. If the person is personally known to the notary public or provides "satisfactory

[17] *Id.*
[18] FLA. CONST., Art. IV, s. 7.
[19] Section 117.05(1), F.S. (providing violation is a third degree felony). *See also* s. 117.05(3)(d), (7), and (8), F.S.; s. 117.105, F.S.; s. 117.107(9), F.S.
[20] Section 117.107(9), F.S. (providing violation is a civil infraction punishable by a fine of up to $5,000).
[21] *See supra* note 5.
[22] Section 117.01(2), F.S. (requiring $25 application fee, $10 commission fee, and $4 educational surcharge, except that the commission fee is waived for veterans with a 50 percent disability).
[23] *See supra* note 5 at p. 7.
[24] Section 117.01(2), F.S.
[25] *Id.*

evidence" by producing valid identification or witnesses or both verifying that the person is who he or she claims to be, the notary public may notarize the document.[26]

Prohibited Acts

Section 117.107, F.S., specifies prohibited acts by notaries. A notary public may not:

- Use a name or initial in signing certificates other than that by which the notary public is commissioned.
- Sign notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp. This does not apply to or prohibit the use of an electronic signature and seal by a notary public who is registered as an online notary public to perform an electronic or online notarization in accordance with ch. 117, F.S.
- Affix his or her signature to a blank form of affidavit or certificate of acknowledgment and deliver that form to another person with the intent that it be used as an affidavit or acknowledgment.
- Take the acknowledgment of or administer an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed, and where the person has not been restored to capacity as a matter of record.
- Notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization.
- Take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.
- Change anything in a written instrument after it has been signed by anyone.
- Amend a notarial certificate after the notarization is complete.
- Notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or by means of audio-video communication technology as authorized under part II of ch. 117, F.S., at the time the signature is notarized. Any notary public who violates this prohibition is guilty of a civil infraction, punishable by penalty not exceeding $5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties.
- Notarize a signature on a document if the document is incomplete or blank. However, an endorsement or assignment in blank of a negotiable or nonnegotiable note and the assignment in blank of any instrument given as security for such note is not deemed incomplete.
- Notarize a signature on a document if the person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public.
- Notarize a signature on a document if the notary public has a financial interest in or is a party to the underlying transaction; however, a notary public who is an employee may notarize a signature for his or her employer, and this employment does not constitute a financial interest in the transaction nor make the notary a party to the transaction as long as he or she does not

[26] Section 117.05(5), F.S.

receive a benefit other than his or her salary and the fee for services as a notary public authorized by law.

Recording Notification Service

In 2023, in response to an increase in fraudulent real property attempted conveyances in which a fraudster executes and records a deed purporting to convey title to or an interest in real property to himself or herself or a third party without the property owner's knowledge or consent, the Legislature enacted legislation in an attempt to minimize the potential for fraudulent real property deeds.[27] Pursuant to s. 28.47, F.S., on or before July 1, 2024, each clerk of the circuit court must create, maintain, and operate a free recording notification service which is open to all persons wishing to register for the service. The clerk must ensure that registration for the recording notification service is possible through an electronic registration portal. When a land record is recorded for a monitored identity, a recording notification must be sent within 24 hours after the recording to each registrant who is subscribed to receive recording notifications for that monitored identity. The notification must contain:

- Information identifying the monitored identity for which the land record was filed;
- The land record's recording date;
- The official record book and page number or instrument number assigned to the land record by the clerk;
- Instructions for electronically searching for and viewing the land record using the assigned official record book and page number or instrument number; and
- A phone number at which the clerk's office may be contacted during normal business hours with questions related to the recording notification.

There is no right or cause of action against, and no civil liability on the part of, the clerk with respect to the creation, maintenance, or operation of the recording notification service, and nothing in s. 28.47, F.S., may be construed to require the clerk to provide or allow access to a record or information which is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution or to otherwise violate the public records laws of Florida.

Section 28.47, F.S., also applies to county property appraisers who have adopted an electronic land record notification service before July 1, 2023. The property appraiser may use a verification process for persons wishing to register for the electronic land record notification service to ensure the integrity of the process. For purposes of the property appraiser electronic land notification service, "land record" means a deed or other document purporting to convey real property. When a land record is recorded for a monitored identity, the property appraiser must send a recording notification to each registrant who is subscribed to receive recording notifications for that monitored identity within 24 hours after the instrument has been reflected on the county tax roll.

[27] Chapter 2023-238, Laws of Fla.

III. Effect of Proposed Changes:

Public Notary Requirements

Section 1 amends s. 117.05, F.S., to require that when notarizing a signature, a notary public must complete a jurat or notarial certificate that must contain, among other elements, the *printed* name of the person whose signature is being notarized. The notarial certificate must also contain the printed names of all signatories, including principals and witnesses.

Section 2 amends s. 117.105, F.S., to prohibit a notary public from:

- Falsely notarizing a signature on a written or electronic document of a person who is not in the presence of the notary public, either in person or online, at the time the signature is notarized;[28] or,
- Falsely *or fraudulently* taking or receiving an acknowledgment of the signature on a written *or electronic document*.

A notary public who violates the above provisions commits a felony of the third degree, punishable as provided in s. 775.082, F.S., (sentencing), s. 775.083, F.S., (fines), or s. 775.084, F.S., (habitual offenders).[29] If the document notarized under these circumstances pertains to a real estate transaction or any other transfer of real property, the notary public commits a felony of the second degree.[30]

Section 3 amends s. 117.107, F.S., by deleting subsection (9), which provides that a notary public may not notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or by means of audio-video communication technology at the time the signature is notarized, and specifies the penalty for a notary public who violates this provision.

The bill also specifies the criminal penalty for a notary public who commits a violation of any of the prohibited acts specified in s. 117.107, F.S. A notary public who commits a violation of s. 117.107, F.S., commits a misdemeanor of the first degree.[31] A notary public who commits a violation of s. 117.107, F.S., with the intent to defraud commits a felony of the third degree. If the violation of s. 117.107, F.S., pertains to a real estate transaction or any other transfer of real property, the notary public commits a felony of the second degree.

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[28] "In the presence of" and "electronic" have the same meaning as provided in s. 117.201, F.S. "In the presence of" means in the physical presence of another person; or outside of the physical presence of another person, but able to see, hear, and communicate with the person by means of audio-video communication technology. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

[29] A "felony of the third degree" is punishable by a term of imprisonment not to exceed 5 years, and a fine not to exceed $5,000.

[30] A "felony of the second degree" is punishable by a term of imprisonment not to exceed 15 years, and a fine not to exceed $10,000.

[31] A "misdemeanor of the first degree" is punishable by a term of imprisonment not to exceed 1 year, and a fine not to exceed $1,000. *See* ss. 775.082 and 775.083, F.S.

Journal of Notarizations

Section 4 creates s. 117.109, F.S., to provide that a notary public must keep one or more tangible journals of all notarizations performed by the notary public. For each notarization, the journal entry must contain all of the following:

- The date and time of the notarization.
- The type of notarial act performed, whether an oath or acknowledgment.
- The type, the title, or a description of the electronic recording or proceeding.
- The name and address of each principal or witness involved in the transaction or proceeding.
- Evidence of identity of each principal involved in the transaction or proceeding in either of the following forms:
  - A statement that the person is personally known to the notary public; or
  - A notation of the type of government-issued identification credential the person provided to the notary public;
    - An indication that the government-issued identification credential satisfied the credential analysis; and
    - An indication that the principal satisfactorily passed the identity proofing.
- The fee, if any, charged for the notarization

The notary public must maintain a backup record of the journal, and protect from unauthorized access the journal, the backup record, and any other records the notary public receives.

The Department of State must retain jurisdiction over the journal records for a period of 10 years after the date of the notarial acts for the purpose of investigating possible notarial misconduct. A notary public must also maintain the journal for at least 10 years after the date of the notarial act.

A notary public, a guardian of an incapacitated notary public, or the personal representative of a notary public may contract with a secure repository, in accordance with any rules established under ch. 117, F.S., and delegate to the repository the notary public's duty to maintain the journal, provided that the Department of State is notified of such delegation of retention duties within 30 days thereafter, including the effective date of the delegation and the address and contact information for the repository.

If a notary public delegates to a secure repository their duty to maintain the journal, the notary public must make an entry in their journal identifying such repository and notify the Department of State. During any delegation, the secure repository must fulfill the responsibilities of the notary public to provide copies or access under s. 117.111, F.S., created by section 5 of the bill.

An omitted or incomplete entry in the journal does not invalidate the notarial act performed, but may be introduced as evidence to establish violations of ch. 117, F.S., as evidence of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, or unconscionability; or for other evidentiary purposes.

Section 5 creates s. 117.111, F.S., to specify further requirements concerning the use of journals by notaries public. A notary public is required to:

- Keep the journal secure and under their sole control. The notary public may not allow another person to use the notary public's journal or allow another person who is providing services to a notary public to facilitate the performance of notarizations.
- Notify an appropriate law enforcement agency and the Department of State of any unauthorized use of or compromise to the security of the journal within 7 days after the discovery of the unauthorized use or compromise to security.
- Provide copies of pertinent entries in the journal upon the request of:
  - The Department of State, pursuant to a notary misconduct investigation; or
  - Any other persons or entities, pursuant to a subpoena, a court order, a law enforcement investigation, or any other lawful inspection demand.[32]

Property Appraiser and Recording Notification Service

Section 6 amends s. 28.47, F.S., to provide that if a property appraiser receives notice from the property owner or clerk of the circuit court and reasonably determines that the recorded deed is fraudulent, the property appraiser may refuse to update the owner of record on the county's tax rolls. However, the property appraiser must make a notation in his or her records that a possible conveyance has been recorded.

Effective Date

The bill takes effect July 1, 2024.

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:

Section 6 of the bill, which modifies a provision relating to a recording notification service by clerks of circuit courts, to provide that if a property appraiser receives notice from a property owner or clerk of the circuit court and reasonably determines that a

[32] The bill provides that these provisions may not be construed to prevent a notary public from designating a secure repository.

recorded deed is fraudulent, the property appraiser may refuse to update the owner of record on the county's tax rolls, may cause the bill to violate the single-subject requirement in Art. III, s. 6, of the Florida Constitution.[33] A legislative act violates the single-subject requirement when the provisions in the bill are not logically connected to one another, are not necessary to achieve the purpose of the legislation or "are designed to accomplish dissociated objects of legislative effort."[34]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The journal of notarizations will presumably come at some cost to notaries public.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.05, 117.105, 117.107, and 28.47.

This bill creates the following sections of the Florida Statutes: 117.109 and 117.111.

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 Commerce and Tourism on January 23, 2024
The committee substitute removes the requirement that notaries public must keep secure "electronic" journals of all notarizations performed, and provides that a notary public must keep one or more "tangible" journals of all notarizations performed.

[33] Art. III, § 6, Fla. Const.
[34] *See Heggs v. State*, 759 So. 2d 620, 626 (Fla. 2000); *State v. Petruzzelli*, 374 So. 2d 13, 15 (Fla. 1979*), State ex rel-Landis v. Thompson*, 120 Fla. 860,892-3, 16350.270, 283 (1935).

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Avila

577-02401-24 2024356c1

A bill to be entitled

An act relating to notaries public; amending s. 117.05, F.S.; requiring that certain notarial certificates contain the printed names of specified individuals; amending s. 117.105, F.S.; prohibiting a notary public from falsely notarizing the signature of a person who is not in that notary public's presence, either in person or online; defining terms; providing criminal penalties; making technical changes; amending s. 117.107, F.S.; deleting a provision that prohibits a notary public from notarizing a signature on a document of a person who is not, at the time of the notarial act, physically present or present by means of audio-video communication technology and that provides civil penalties; providing criminal penalties; creating s. 117.109, F.S.; requiring a notary public to keep at least one tangible journal; requiring a journal entry for each notarization; providing requirements for such entries; requiring the notary public to take reasonable steps to maintain a backup record and to protect the journal, the backup record, and other records from unauthorized access; requiring the Department of State to retain jurisdiction over the journal records for a specified timeframe for a certain purpose; requiring the notary public to maintain the journal for a specified timeframe; authorizing the notary public or specified individuals on his or her behalf to contract with a secure repository to maintain the journal; providing

577-02401-24 2024356c1

that such repository must fulfill specified duties of the notary public with respect to the journal; requiring the notary public to send, within a specified timeframe, a certain notification to the department of such delegation of retention duties; requiring the notary public to make an entry identifying the repository and providing notice to the department; requiring the secure repository to fulfill certain responsibilities of the notary public during any delegation; providing that an omitted or incomplete entry in the journal does not invalidate the notarial act, but may be used for specified evidentiary purposes; creating s. 117.111, F.S.; requiring a notary public to keep the journal secure and notify, within a specified timeframe, the appropriate law enforcement agency and the department of any unauthorized use of or compromise to the security of the journal; prohibiting the notary public from allowing another person to use the notary public's journal or from allowing another person who is providing services to a notary public to facilitate the performance of notarizations; requiring the notary public to provide copies of pertinent entries upon the request of specified entities; providing construction; amending s. 28.47, F.S.; authorizing a property appraiser to refuse to update an owner of record on the county's tax rolls under specified circumstances; requiring the property appraiser to make a certain notation in the records in the event such refusal is

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

made; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) and subsection (13) of section 117.05, Florida Statutes, are amended to read:

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(4) When notarizing a signature, a notary public shall complete a jurat or notarial certificate in substantially the same form as those found in subsection (13). The jurat or certificate of acknowledgment shall contain the following elements:

(e) The printed name of the person whose signature is being notarized. It is presumed, absent such specific notation by the notary public, that notarization is to all signatures.

(13) The following notarial certificates are sufficient for the purposes indicated, if completed with the information required by this chapter. The specification of forms under this subsection does not preclude the use of other forms. However, the notarial certificate must contain the printed names of all signatories, including principals and witnesses.

(a) For an oath or affirmation:

STATE OF FLORIDA
COUNTY OF ....

Sworn to (or affirmed) and subscribed before me by means of ☐

physical presence or ☐ online notarization, this .... day of ....., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known..... OR Produced Identification.....
Type of Identification Produced.....

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA
COUNTY OF ....

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this .... day of ....., ...(year)..., by ...(name of person acknowledging)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known..... OR Produced Identification.....
Type of Identification Produced.....

(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA
COUNTY OF ....

The foregoing instrument was acknowledged before me by means of

☐ physical presence or ☐ online notarization, this .... day of ....., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known..... OR Produced Identification.....

Type of Identification Produced.....

Section 2. Section 117.105, Florida Statutes, is amended to read:

117.105 False or fraudulent acknowledgments; penalties for prohibited acts ~~penalty~~.—

(1) A notary public may not do any of the following: ~~who~~

(a) Falsely notarize a signature on a written or electronic document of a person who is not in the presence of the notary public, either in person or online, at the time the signature is notarized. For the purposes of this paragraph, the terms "in the presence of" and "electronic" have the same meaning as provided in s. 117.201.

(b) Falsely or fraudulently take ~~takes~~ an acknowledgment of an instrument as a notary public. ~~or~~

(c) ~~Who~~ Falsely or fraudulently make ~~makes~~ a certificate as a notary public. ~~or~~

(d) ~~Who~~ Falsely or fraudulently take or receive ~~takes or receives~~ an acknowledgment of the signature on a written or electronic document ~~instrument is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

(2) A notary public who violates subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the document notarized under these circumstances pertains to a real estate transaction or any other transfer of real property, the notary public commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 117.107, Florida Statutes, is amended to read:

117.107 Prohibited acts; penalty.—

(1) A notary public may not use a name or initial in signing certificates other than that by which the notary public is commissioned.

(2) A notary public may not sign notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp. This subsection does not apply to or prohibit the use of an electronic signature and seal by a notary public who is registered as an online notary public to perform an electronic or online notarization in accordance with this chapter.

(3) A notary public may not affix his or her signature to a blank form of affidavit or certificate of acknowledgment and deliver that form to another person with the intent that it be used as an affidavit or acknowledgment.

(4) A notary public may not take the acknowledgment of or

administer an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed pursuant to s. 744.3215(2) or (3), and where the person has not been restored to capacity as a matter of record.

(5) A notary public may not notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization.

(6) A notary public may not take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.

(7) A notary public may not change anything in a written instrument after it has been signed by anyone.

(8) A notary public may not amend a notarial certificate after the notarization is complete.

(9) ~~A notary public may not notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or by means of audio-video communication technology as authorized under part II of this chapter at the time the signature is notarized. Any notary public who violates this subsection is guilty of a civil infraction, punishable by penalty not exceeding $5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense to the civil infraction specified in this subsection that the notary public acted without intent to~~

~~defraud. A notary public who violates this subsection with the intent to defraud is guilty of violating s. 117.105.~~

~~(10)~~ A notary public may not notarize a signature on a document if the document is incomplete or blank. However, an endorsement or assignment in blank of a negotiable or nonnegotiable note and the assignment in blank of any instrument given as security for such note is not deemed incomplete.

(10)~~(11)~~ A notary public may not notarize a signature on a document if the person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public.

(11)~~(12)~~ A notary public may not notarize a signature on a document if the notary public has a financial interest in or is a party to the underlying transaction; however, a notary public who is an employee may notarize a signature for his or her employer, and this employment does not constitute a financial interest in the transaction nor make the notary a party to the transaction under this subsection as long as he or she does not receive a benefit other than his or her salary and the fee for services as a notary public authorized by law. For purposes of this subsection, a notary public who is an attorney does not have a financial interest in and is not a party to the underlying transaction evidenced by a notarized document if he or she notarizes a signature on that document for a client for whom he or she serves as an attorney of record and he or she has no interest in the document other than the fee paid to him or her for legal services and the fee authorized by law for services as a notary public.

(12) A notary public who commits a violation of this section commits a misdemeanor of the first degree, punishable as

provided in s. 775.082 or s. 775.083. A notary public who commits a violation of this section with the intent to defraud commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the violation of this section pertains to a real estate transaction or any other transfer of real property, the notary public commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Section 117.109, Florida Statutes, is created to read:

117.109 Journal of notarizations.—

(1) A notary public shall keep one or more tangible journals of all notarizations performed by the notary public. For each notarization, the journal entry must contain all of the following:

(a) The date and time of the notarization.

(b) The type of notarial act performed, whether an oath or acknowledgment.

(c) The type, the title, or a description of the electronic recording or proceeding.

(d) The name and address of each principal or witness involved in the transaction or proceeding.

(e) Evidence of identity of each principal involved in the transaction or proceeding in either of the following forms:

1. A statement that the person is personally known to the notary public; or

2.a. A notation of the type of government-issued identification credential the person provided to the notary public;

b. An indication that the government-issued identification credential satisfied the credential analysis; and

c. An indication that the principal satisfactorily passed the identity proofing.

(f) The fee, if any, charged for the notarization.

(2) The notary public shall take reasonable steps to:

(a) Maintain a backup record of the journal required by subsection (1).

(b) Protect from unauthorized access the journal, the backup record, and any other records the notary public receives.

(3) The Department of State shall retain jurisdiction over the journal records for a period of 10 years after the date of the notarial acts for the purpose of investigating possible notarial misconduct.

(a) A notary public shall maintain the journal required under subsection (1) for at least 10 years after the date of the notarial act.

(b) A notary public, a guardian of an incapacitated notary public, or the personal representative of a notary public may contract with a secure repository, in accordance with any rules established under this chapter, and delegate to the repository the notary public's duty to maintain the journal, provided that the department is notified of such delegation of retention duties within 30 days thereafter, including the effective date of the delegation and the address and contact information for the repository.

(c) If a notary public delegates to a secure repository his or her duty to maintain the journal required under this section, the notary public must make an entry in his or her journal

identifying such repository and notify the department as required in this subsection. During any delegation under this subsection, the secure repository shall fulfill the responsibilities of the notary public to provide copies or access under s. 117.111.

(4) An omitted or incomplete entry in the journal does not invalidate the notarial act performed, but may be introduced as evidence to establish violations of this chapter; as evidence of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, or unconscionability; or for other evidentiary purposes.

Section 5. Section 117.111, Florida Statutes, is created to read:

117.111 Use of journal.—

(1) A notary public shall do all of the following:

(a) Keep the journal maintained pursuant to s. 117.109 secure and under his or her sole control. The notary public may not allow another person to use the notary public's journal or allow another person who is providing services to a notary public to facilitate the performance of notarizations.

(b) Notify an appropriate law enforcement agency and the Department of State of any unauthorized use of or compromise to the security of the journal within 7 days after the discovery of the unauthorized use or compromise to security.

(2) A notary public shall provide copies of pertinent entries in the journal upon the request of any of the following:

(a) The department, pursuant to a notary misconduct investigation.

(b) Any other persons or entities, pursuant to a subpoena,

a court order, a law enforcement investigation, or any other lawful inspection demand.

(3) This section may not be construed to prevent a notary public from designating a secure repository under s. 117.109.

Section 6. Subsection (6) of section 28.47, Florida Statutes, is amended to read:

28.47 Recording notification service.—

(6) This section also applies to county property appraisers who have adopted an electronic land record notification service before July 1, 2023.

(a)1. The property appraiser may use a verification process for persons wishing to register for the electronic land record notification service to ensure the integrity of the process.

2. If the property appraiser receives notice from the property owner or clerk of the circuit court and reasonably determines that the recorded deed is fraudulent, the property appraiser may refuse to update the owner of record on the county's tax rolls. However, the property appraiser shall make a notation in his or her records that a possible conveyance has been recorded.

(b) For purposes of this subsection only, and notwithstanding paragraph (1)(a) and subsection (3):

1. "Land record" means a deed or other document purporting to convey real property.

2. When a land record is recorded for a monitored identity, the property appraiser must send a recording notification to each registrant who is subscribed to receive recording notifications for that monitored identity within 24 hours after the instrument being reflected on the county tax roll.

Section 7. This act shall take effect July 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2-15-24
Meeting Date

Fiscal Policy
Committee

SB356
Bill Number or Topic

Amendment Barcode (if applicable)

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City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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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. 2020-2022JointRules.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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2-15-24
Meeting Date

FISCAL POLICY
Committee

356
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jess McCarty, Executive Assistant County Attorney

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City | *State* | *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☑ I am a registered lobbyist, representing:
Miami-Dade 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/24-12:00PM
Meeting Date

Fiscal Policy
Committee

356 - Notaries Public
Bill Number or Topic

Amendment Barcode (if applicable)

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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:
AARP

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/CS/SB 434
INTRODUCER:	Fiscal Policy Committee; Transportation Committee; and Senator Harrell
SUBJECT:	Specialty License Plates
DATE:	February 19, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shutes	Vickers	TR	**Fav/CS**
2.	Wells	Jarrett	ATD	**Favorable**
3.	Shutes	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 434 authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to create the following new specialty license plates:

- Margaritaville
- General Aviation
- Clearwater Marine Aquarium
- United Service Organizations (USO)
- Recycle Florida
- Boating Capital of the World
- Cure Diabetes
- Project Addiction: Reversing the Stigma
- The Villages: May All Your Dreams Come True

The bill also revises certain requirements relating to several existing specialty license plates, including collegiate plates, the Live The Dream plate, the Divine Nine plates, and the Give Kids The World plate.

The bill will have a negative, but insignificant, fiscal impact to DHSMV associated with programming and implementation costs.

The bill takes effect October 1, 2024.

II. Present Situation:

Specialty License Plates

As of December 2023, there are 144 specialty license plates authorized by the Legislature. Of these plates, 109 are available for immediate purchase and 31 are in the presale process.[1] Specialty license plates are available to an owner or lessee of a motor vehicle who is willing to pay an annual use fee, ranging from $15 to $25, paid in addition to required license taxes and service fees.[2] The annual use fees are distributed to organizations in support of a particular cause or charity signified on the plate's design and designated in statute.[3]

In order to establish a specialty license plate and after the plate is approved by law, s. 320.08053, F.S., requires the following actions within certain timelines:

- Within 60 days, the organization must submit an art design for the plate, in a medium prescribed by the DHSMV;
- Within 120 days, the DHSMV must establish a method to issue presale vouchers for the specialty license plate; and
- Within 24 months after the presale vouchers are established, the organization must obtain a minimum of 3,000 voucher sales before manufacturing of the plate may begin.[4]

If the minimum sales requirement has not been met by the end of the 24-month presale period, then the DHSMV will discontinue the plate and issuance of presale vouchers. Upon discontinuation, a purchaser of a presale voucher may use the annual use fee as a credit towards any other specialty license plate or apply for a refund with the DHSMV.[5]

New specialty license plates that have been approved by law but are awaiting issuance will be issued in the order they appear in s. 320.08058, F.S., provided that presale requirements have been met. If the next listed specialty license plate has not met the presale requirement, the DHSMV will proceed in the order provided in s. 320.08058, F.S., to identify the next qualified specialty license plate that has met the presale requirement.[6]

If the Legislature has approved 135 or more specialty license plates, the DHSMV may not make any new specialty license plates available for design or issuance until a sufficient number of plates are discontinued so that the number of plates being issued does not exceed 135.[7]

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[1] DHSMV Presentation to the Senate Transportation Committee, *Specialty License Plate*s (January 24, 2023), slideshow available at https://www.flsenate.gov/Committees/Show/TR/MeetingPacket/5615/10046_MeetingPacket_5615_3.pdf (last visited October 10, 2023).
[2] Section 320.08056(3)(d), F.S., provides that except if specifically provided in s. 320.08056(4), the annual use fee for a specialty license plate is $25.
[3] Section 320.08058, F.S.
[4] Chapter 2022-189, Laws of Fla., extended the presale requirement by an additional 24 months for an approved specialty license plate organization that, as of June 15, 2022, is in the presale period but had not recorded at least 3,000 voucher sales.
[5] Section 320.08053(2)(b), F.S.
[6] Section 320.08053(3)(a), F.S.
[7] Section 320.08053(3)(b), F.S.

Use of Specialty License Plate Fees

The annual use fees collected by an organization and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of specified United States Armed Forces and veterans-related specialty plates.[8] Additionally, organizations must adhere to certain accountability requirements, including an annual audit or attestation document affirming that funds received have been spent in accordance with applicable statutes.[9]

The annual use fees collected by an organization and the interest earned from those fees may not be used for commercial or for-profit activities, or general or administrative expenses, unless authorized by s. 320.08058, F.S.[10] Additionally, the annual use fees and interest earned from those fees may not be used for the purpose of marketing to, or lobbying, entertaining, or rewarding, any employee of a governmental agency that is responsible for the sale and distribution of specialty license plates, or any elected member or employee of the Legislature.[11]

Discontinuance of Specialty Plates

Prior to June 30, 2023, the DHSMV was required to discontinue the issuance of an approved specialty license plate if the number of valid registrations fells below 1,000 plates for at least 12 consecutive months. A warning letter was mailed to the sponsoring organization following the first month in which the total number of valid specialty license plate registrations fell below 1,000 plates. Collegiate plates for Florida universities were exempt from the minimum specialty license plate requirement.[12] In addition, the DHSMV was authorized to discontinue any specialty license plate if the organization ceased to exist, stopped providing services that are funded from the annual use fee proceeds, or pursuant to an organizational recipient's request.[13]

However, effective July 1, 2023, the requirement increased so that the DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid registrations falls below 3,000 or in the case of an out-of-state college or university license plate, 4,000, for at least 12 consecutive months. The DHSMV must mail a warning letter to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 3,000, or in the case of an out-of-state college or university license plate, 4,000. This does not apply to in-state collegiate license plates established under s. 320.08058(3), F.S., license plates of institutions in and entities of the State University System, specialty license plates that have statutory eligibility limitations for purchase, specialty license plates for which annual use fees are distributed by a foundation for student and teacher leadership programs and teacher recruitment and retention, or Florida professional sports team license plates established under s. 320.08058(9), F.S.[14]

[8] Section 320.08056(10)(a), F.S.
[9] Section 320.08062, F.S.; Such fees may be used to pay for the cost of this required audit or report. See s. 320.08056(10)(a), F.S.
[10] Section 320.08056(10)(a), F.S.
[11] Section 320.08056(11), F.S.
[12] Section 320.08056(8)(a), F.S.
[13] Section 320.08056(8)(b), F.S.
[14] Chapter 2020-181, s. 7, Laws of Fla.

Collegiate Specialty License Plates

Each state and independent university in Florida has the ability to develop a collegiate license plate if authorized by an act of the Legislature. The specialty license plate fees collected must be used by the respective foundation for academic enhancement, including scholarships and private fundraising activities, in a plan approved by the Board of Governors of the State University System.[15] Currently, there are 41 specialty collegiate license plates in circulation.[16]

Live The Dream Specialty License Plate

In 2004, the DHSMV was authorized to create the Live The Dream specialty license plate. The proceeds for the Live The Dream specialty license plate are currently distributed to the Dream Foundation, Inc., which is required to distribute the funds in the following manner:

- 5 percent for administration and marketing (retained by the Dream Foundation, Inc.);
- 25 percent to various sickle cell-focused organizations;
- 22 percent to Chapman Partnership Inc., for social services programs;
- 20 percent in scholarship funding for students with an incarcerated parent/guardian;
- 15 percent to unnamed programs to assist former inmates reentering the community; and
- 8 percent to the Dream Foundation, Inc., to assist inmates reentering the community.[17]

Five percent of the proceeds are distributed by DHSMV to the MLK Center for Nonviolent Social Change as a royalty for the use of the image of Dr. Martin Luther King.[18]

On December 13, 2023, DHSMV issued a report pursuant to s. 320.08062(2)(d), F.S., which indicated that revenues associated with the Live The Dream specialty license plate were being withheld as a result of unresolved audit findings.[19] The report noted that the board of directors of the Dream Foundation, Inc., was non-operational, and, as of September 2023, the Dream Foundation, Inc., was listed as inactive with the Florida Division of Corporations.[20] As of December 6, 2023, DHSMV was withholding $179,843 and there were 5,585 active Live The Dream specialty license plates.[21]

[15] Section 320.08058(3), F.S.
[16] DHSMV, *Supra* note 1.
[17] Section 320.08058(47), F.S.
[18] *Id.*
[19] DHSMV, *Withheld Specialty License Plate Fund,* Audit Report, December 13, 2023, at p2.
[20] *Id.*
[21] *Id.*

Divine Nine Specialty License Plates

In 2020, the DHSMV was authorized to create the Divine Nine specialty license plates.[22] The Divine Nine specialty license plates consist of plates authorized for the nine member organizations of the National Pan-Hellenic Council.[23] The nine member organizations include:

- Alpha Phi Alpha Fraternity;
- Alpha Kappa Alpha Sorority;
- Kappa Alpha Psi Fraternity;
- Omega Psi Phi Fraternity;
- Delta Sigma Theta Sorority;
- Phi Beta Sigma Fraternity;
- Zeta Phi Beta Sorority;
- Sigma Gamma Rho Sorority; and
- Iota Phi Theta Fraternity.

Each organization's plate has a unique logo, graphic, or colors, as well as distribution specific to the individual organization.[24] However, plate sales are combined as one Divine Nine specialty license plate for the purpose of meeting the minimum license plate sales threshold and for determining the license plate limit.[25]

The plate has a $25 annual use fee. The revenue generated through the sale of the plate is distributed to following recipient organizations: the United Negro College Fund, Inc., for college scholarships for Florida residents attending Florida's historically black colleges and universities; the Association to Preserve African American Society, History and Tradition, Inc.; and to additional organizations as specified to promote community awareness and action through educational, economic, and cultural service activities within the state.[26]

To be eligible for issuance of a Divine Nine specialty license plate, a person must be a Florida resident, the registered owner of a motor vehicle, and a member of the applicable organization.[27]

Give Kids The World Specialty License Plate

Florida law currently authorizes the development of a Give Kids The World license plate.[28] The specialty plate is required to:

- Bear the colors and design approved by DHSMV; and
- Have the word "Florida" appear at the top of the plate and the words "Give Kids The World" appear at the bottom of the plate.[29]

[22] Chapter 2020-181, Laws of Fla., creating s. 320.08058(101), F.S.
[23] The National Pan-Hellenic Council's purpose is to foster cooperative actions of its members in dealing with matters of mutual concern and to promote the well-being of its fraternities and sororities. See National Pan-Hellenic Council, *About the NPHC*, https://www.nphchq.com/about (last visited December 20, 2023).
[24] Section 320.08058(101)(a) and (b), F.S.
[25] Section 320.08058(101), F.S.
[26] Section 320.08058(101)(b), F.S.
[27] Section 320.08058(101)(c), F.S.
[28] Section 320.08058(107), F.S.
[29] *Id.*

The annual use fees from the sale of the plate must be distributed to Give Kids The World, Inc., a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code. Up to 10 percent of the proceeds may be used for the promotion and marketing of the plate. The remainder of the proceeds may be used by Give Kids The World, Inc., to support their mission of providing week-long, cost-free vacations to children with critical illnesses and their families.[30]

The plate has sold 116 presale vouchers and must sell an additional 2,884 presale vouchers in order to be placed in production.[31]

Organizations Sponsoring Proposed New Specialty License Plates

Singing for Change (Margaritaville)

Singing for Change was founded by Jimmy Buffett in 1995 and is a Florida not-for-profit corporation registered with the Florida Department of State.[32] The organization's statement of purpose is "inspire personal growth, community integration and the enhanced awareness that collectively, people can bring about positive change."[33]

According to the organization's website, Singing for Change supports small nonprofits that help individuals become more self-sufficient and create positive change in their communities. The organization focuses on low income communities or people living in poverty.[34]

Aerospace Center for Excellence (General Aviation)

Aerospace Center for Excellence is a Florida not-for-profit corporation registered with the Florida Department of State.[35] The organization's statement of purpose is "to engage, educate and accelerate the next generation of aerospace professionals."[36]

The organization was founded in 2014, and consists of staff members focused on education, scholarships and events to achieve their vision of "building a brighter future through aviation." The Aerospace Center for Excellence hosts summer camps and student outreach programs that are presented by the staff to over 30,000 students annually. The organization provides educational support to the aerospace industry to include pilot, maintenance technicians and college scholarships.[37]

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[30] *Id.*
[31] This data is as of January 29, 2024, which is the most recently available data on the DHSMV website. FLHSMV, *SPECIALTY LICENSE PLATES: Pre-Sale Data*, https://www.flhsmv.gov/motor-vehicles-tags-titles/personalized-specialty-license-plates/specialty-license-plates/pre-sale-data/ (last visited Feb. 8, 2024).
[32] Florida Department of State: Division of Corporations, *SFC Charitable Foundation, INC.*, Sunbiz.org, Document number N94000005329 (December 8, 2023).
[33] *Id.*
[34] Singing for Change, *About Us*, About Us | Singing For Change (last visited December 8, 2023).
[35] Florida Department of State: Division of Corporations, *Aerospace Center for Excellence, Inc.*, Sunbiz.org, Document number N00000007283 (October 10, 2023).
[36] *Id.*
[37] Aerospace for Excellence, *About*, About - Aerospace Center For Excellence (aceedu.org) (last visited October 10, 2023).

Clearwater Marine Aquarium

Clearwater Marine Aquarium, Inc. is a Florida not-for-profit corporation registered with the Florida Department of State.[38] The organization's website includes the following mission statement: "We believe in preserving our environment while inspiring the human spirit through leadership in the rescue, rehabilitation, and release of marine life; environment education; research; and conservation."[39]

The organization was founded in 1972 by a group of volunteers who were passionate about marine life and wanted to help educate the community of Clearwater.[40]

United Service Organizations (USO)

USO Florida, Inc. is a Florida not-for-profit corporation registered with the Florida Department of State.[41] The organization's website includes the following mission statement: "The USO strengthens America's military service members by keeping them connected to family, home and country, throughout their service to the nation."[42]

USO was created in 1941 and has been the nation's leading organization to serve the members of military and their families, throughout their time in uniform.[43] Today the USO operates in over 250 locations around the world providing programs and services to deployed military service members and their families. These programs and services include:[44]

- Providing centers with free internet access or free calling cards to deployed service members in combat zones so they can reach out to their families;
- Delivering care packages to deployed service members;
- Organizing trademark USO entertainment tours for service members;
- Providing support to injured service members; and
- Providing support to the families of fallen service members.

Recycle Florida Today Foundation, Inc. (Recycle Florida)

Recycle Florida Today Foundation, Inc., was founded in 2022 and is a Florida not-for-profit corporation registered with the Florida Department of State.[45] The organization's mission is

[38] Florida Department of State: Division of Corporations, *Clearwater Marine Aquarium, Inc.* Sunbiz.org, Document number 722979 (October 27, 2023).
[39] *Id.*
[40] Clearwater Marine Aquarium, *50 Years of Marine Conservation*, 50 Years of Marine Conservation - Clearwater Marine Aquarium (cmaquarium.org) (last visited October 27, 2023).
[41] Florida Department of State: Division of Corporations, *United Service Organizations, Inc.* Sunbiz.org, Document number F02000006193 (December 8, 2023).
[42] *Id.*
[43] United Service Organizations, *About Us*, The Organization · United Service Organizations (uso.org) (last visited December 8, 2023).
[44] *See* USO, *Frequently Asked Questions - What programs and services does the USO offer?*, https://www.uso.org/faq (last visited January 11, 2024).
[45] Florida Department of State: Division of Corporations, *Recycle Florida Today Foundation, Inc.*, Sunbiz.org, Document number N22000012565 (December 20, 2023).

"provide value to our membership by promoting resource conservation and environmental stewardship"[46].

The organization's vision is to inform the public, law-making bodies, and the business community of the economic significance and importance of waste prevention and source reduction and to demonstrate the high professional standards of those involved in the business of recycling. The organization believes that this is accomplished through sponsorship of education meetings, research, and publication of articles, reports, statistics, and other material.[47]

Captain Sandy Yawn, Inc. (Boating Capital of the World)

Captain Sandy Yawn, Inc., was founded by Captain Sandy Yawn in 2019 and is a Florida not-for-profit corporation registered with the Florida Department of State.[48] Captain Sandy Yawn, Inc., supports Captain Sandy's Charities, which "promote awareness, funding, and structure of four foundational pillars based on Captain Sandy's direct experience, her desire to give back, and in recognition of those critical people, places, and institutions that helped her along the way."[49]

The organization focuses on maritime employment opportunities, environmental education, behavioral health assistance, and developmental disability services.[50]

Diabetes Research Organizations (Cure Diabetes)

The Diabetes Research Institute Foundation

The Diabetes Research Institute Foundation is a Florida not for profit corporation with a mission to provide the funding necessary to cure diabetes through research. The Diabetes Research Institute is a "designated Center of Excellence at the University of Miami Miller School of Medicine, providing informative education and training programs for many types of health care professionals and industry representatives."[51]

JDRF International Incorporated

The JDRF International Incorporated (JDRF) is an international, non-profit organization dedicated to raising funds to support and promote diabetes research. JDRF "is the leading global organization funding Type 1 Diabetes (T1D) research," with a mission of "improving lives today

[46] *Id.*
[47] Recycle Florida Today Foundation, Inc., *Home*, Recycle Florida Today, Inc. – Recycle Today for a Sustainable Tomorrow (last visited December 20, 2023).
[48] Florida Department of State: Division of Corporations, *Captain Sandy Yawn, Inc.*, Sunbiz.org, Document number N19000006425 (December 20, 2023).
[49] *Id.*
[50] Captain Sandy Yawn, *Charities*, Donate to Captain Sandy's Charities – Captain Sandy Yawn (last visited December 20, 2023).
[51] Diabetes Research Institute Foundation, *About Us*, https://diabetesresearch.org/about-DRI/ (last visited December 20, 2023).

and tomorrow by accelerating life-changing breakthroughs to cure, prevent and treat T1D and its complications."[52]

The Foundation has a Northern and Southern Florida Chapter. The local chapters serve as the hub of Foundation information and events held in the area.[53]

The University of Florida Foundation, Inc.

The University of Florida (UF) Foundation, Inc., which supports the UF Diabetes Institute was founded in 2015 and serves as the umbrella organization for diabetes research, treatment, and education coordinated at UF and UF Health. "Researchers and physicians affiliated with the Diabetes Institute are working to prevent, diagnose, and treat diabetes in a wide array of areas, including immunology, genetics, endocrinology, metabolism, pediatrics and social sciences."[54] The UF Diabetes Institute is the primary coordinating center for the JDRF Network for Pancreatic Organ Donors with Diseases.

Project Addiction: Reversing the Stigma

Project Addiction: Reversing the Stigma, Inc., was founded in 2021 and is a Florida not-for-profit corporation registered with the Florida Department of State.[55] The organization's mission statement is: "Empowering the lives of those with Substance Use Disorder (SUD) and Mental Illness through Education, Awareness, and Support."[56]

The organization was founded to spread awareness of the opioid epidemic and find proactive ways to honor family members lost to Substance Use Disorder and mental illness.[57]

The Villages: The Villages Charter School, Inc.

The Villages Charter School, Inc., was founded in 2000 and is a Florida not-for-profit corporation registered with the Florida Department of State.[58] The Villages Charter School, Inc. has a contract with the Sumter County School Board and is dedicated to nurturing productive citizens and life-long learners through an integrated, relevant curriculum tailored to the

[52] Juvenile Diabetes Research Foundation, *About Us*, https://www.jdrf.org/about/?_ga=2.216079830.1597347397.1666008274-1688791745.1661161232 (last visited December 20, 2023).
[53] *See* JDRF Northern Florida Chapter, https://www.jdrf.org/northernflorida/ and JDRF Southern Florida Chapter, https://www.jdrf.org/southernflorida/ (last visited December 20, 2023).
[54] University of Florida Diabetes Institute, *About the UF Diabetes Institute*, https://diabetes.ufl.edu/about-us/ (last visited December 20, 2023).
[55] Florida Department of State: Division of Corporations, *Project Addiction: Reversing the Stigma, Inc.*, Sunbiz.org, Document number N2100011775 (December 20, 2023).
[56] *Id.*
[57] Project Addiction: Reversing the Stigma, About *Mission Statement*, About | Reversing The Stigma (last visited December 20, 2023).
[58] Florida Department of State: Division of Corporations, *The Villages Charter School, Inc.*, Sunbiz.org, Document number N99000005259 (February 15, 2024).

individual needs of its students.[59] The Village Charter School offers K-12 curriculum at its six attendance centers.[60]

III. Effect of Proposed Changes:

The bill creates nine new specialty license plates and revises certain requirements relating to four existing specialty license plates.

Margaritaville Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "Margaritaville." Proceeds from the sale of the plate will be distributed to SFC Charitable Foundation, Inc. The organization may use up to 10 percent of the proceeds to promote and market the plate. The remaining funds shall be used to provide grants to nonprofit organizations in communities impacted by natural or manmade disasters for recovery, rebuilding, and future sustainability in those communities. Additionally, funds may be used to promote and inspire local grassroots leadership that will work to improve the quality of life in those communities and the state The plate must bear the colors and design approved by the department, with the word "Florida" at the top of the plate and the words "Margaritaville" at the bottom of the plate.

General Aviation Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "General Aviation." Proceeds from the sale of the plate will be distributed to Aerospace Center for Excellence, Inc. The organization may use up to 10 percent of proceeds to promote and market the plate. The remaining funds must be used to fund scholarships for students in the state of Florida who are pursuing careers in the field of aviation. The plate must bear the colors and design approved by the department, with the word "Florida" at the top of the plate and the words "Support General Aviation" at the bottom of the plate.

Clearwater Marine Aquarium Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "Clearwater Marine Aquarium." Proceeds from the sale of the plate will be distributed to Clearwater Marine Aquarium, Inc. The organization may use up to 10 percent of the fees for the administration, promotion, and marketing of the plate. The remaining fees must be used by the Clearwater Marine Aquarium, Inc., to fund its efforts to rescue, rehabilitate, and release marine life; provide environmental education; conduct research; and promote conservation strategies.

United Service Organizations (USO) Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "United Service Organizations (USO)." Proceeds from the sale of the plate will be distributed to USO Florida,

[59] The Villages Charter School, *Charter School in the Workplace*, https://www.tvcs.org/centralOffice/charterInTheWorkplace/charterInTheWorkplace.asp (last visited Feb. 8, 2024).
[60] The Villages Charter School, *Central Office*, https://www.tvcs.org/centralOffice/centraloffice.asp (last visited Feb. 8, 2024).

Inc. The organization may use up to 10 percent of the fees for the administration, promotion, and marketing of the plate. The remaining fees must be used by the USO Florida, Inc., to support members of the United States Armed forces and their families through their various programs, services, and events. The plate must bear the colors and design approved by the department, with the word "Florida" at the top of the plate and the words "USO" at the bottom of the plate.

Recycle Florida Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "Recycle Florida." Annual use fees shall be used to distributed to the Recycle Florida Today Foundation, Inc., to increase public awareness about the importance of recycling, resource conservation, and environmental stewardship; to promote robust, comprehensive, and sustainable recycling programs; and to support the professional development of persons employed in the fields including, but not limited to, recycling, conservation, and sustainability. The plate must bear the colors and design approved by the department, with the word "Florida" at the top of the plate and the words "Recycle Florida" at the bottom of the plate.

Boating Capital of the World Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "Boating Capital of the World." Annual use fees shall be distributed to Captain Sandy Yawn, Inc., to be used to increase public awareness of employment opportunities in the maritime industry; to fund maritime workforce instruction and training; to promote professional development and job placement in all sectors of employment; and to support advancement of education for trainees in the maritime industry, both at sea and on land. The plate must bear the colors and design approved by the department, with the word "Florida" at the top of the plate and the words "Boating Capital of the World" at the bottom of the plate.

Cure Diabetes Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "Cure Diabetes." The annual use fee for the plate will be distributed equally to the following organizations to fund research to cure Type 1 diabetes:

- The Diabetes Research Institute Foundation;
- The JDRF International Incorporated; and
- The University of Florida Foundation, Inc., which supports the University of Florida Diabetes Institute.

Each organization is authorized to use up to ten percent of proceeds from sales of the plate to market and promote the plate. The plate must bear the colors and design approved by the department, with the word "Florida" at the top of the plate and the words "Cure Diabetes" at the bottom of the plate.

Project Addiction: Reversing the Stigma Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "Project Addiction: Reversing the Stigma." Proceeds from the sale of the plate will be distributed to Project Addiction:

Reversing the Stigma, Inc. The organization may use up to 10 percent of proceeds to promote and market the plate. The remaining funds shall be used to fund the Project Addiction: Reversing the Stigma organization to promote and support awareness of and education about substance use disorder and mental illness. The plate must bear the colors and design approved by the department, with the word "Florida" at the top of the plate and the words "Project Addiction: Reversing the Stigma" at the bottom of the plate.

The Villages: May All Your Dreams Come True Specialty License Plate

The bill directs DHSMV to create a new specialty license plate for "The Villages: May All Your Dreams Come True." Proceeds from the sale of the plate will be distributed to The Villages Charter School, Inc. The organization may use up to 10 percent of proceeds to promote and market the plate. The remaining funds must distributed with the approval of, and accountability to, a board of directors of The Villages Charter School, Inc., and must be used to provide support to The Villages Charter School, as it provides K-12 education. The plate must bear the colors and design approved by the department, with the word "Florida" at the top of the plate and the words "The Villages: Mat All Your Dreams Come True" at the bottom of the plate.

Collegiate License Plates

The bill amends ss. 320.08056, and 320.08058, F.S., to exempt a collegiate license plate from being discontinued based on having the fewest number of plates in circulation and to exempt such plates from presale voucher requirements. The bill also allows a previously discontinued collegiate plate to be reauthorized by DHSMV if the university resubmits the collegiate license plate for authorization.

Live The Dream Specialty License Plate

The bill amends s. 320.08058(47), F.S., to revise the distribution of proceeds for the Live The Dream specialty license plate from the inactive Live the Dream Foundation, Inc., to the Operating Trust Fund within the Department of State and stipulates these funds must be used to support the Historic Cemeteries Program established in s. 267.21, F.S. Specifically, the funds must be used to research, identify, and record abandoned African-American cemeteries and provide grants to eligible entities.

Divine Nine Specialty License Plates

The bill amends s. 320.0858(101), F.S., to expand eligibility for issuance of the Divine Nine specialty license plates. The bill provides eligibility for such plates to an organization member's immediate relative and to motor vehicle lessees (currently limited to vehicle owners).

The bill defines "immediate relative" as a spouse, domestic partner, or child of a member. Proof of relationship will be established by providing a marriage license, domestic partnership agreement, birth certificate, or record of adoption. Motor vehicle lessees will be required to provide a lease agreement and the vehicle identification number for the motor vehicle that is being leased.

Give Kids The World Specialty License Plate

The bill amends s. 320.08058(107), F.S., to rename the existing "Give Kids The World" specialty license plate as the "Universal Orlando Resort" specialty license plate. The bill revises the design of the plate to replace the words "Give Kids The World" with the words "Universal Orlando Resort" at the bottom of the plate. The proceeds from the sale of the plate will continue to be distributed to Give Kids The World, Inc.

The bill takes effect October 1, 2024.

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:

If the specialty license plates are produced, the organizations authorized to receive a distribution from the proceeds of the sale of the plates will benefit.

C. Government Sector Impact:

The DSHMV will need to update its procedures, forms, and website to incorporate the new license plates and the changes to the collegiate, Live The Dream, and Give Kids The World license plates. Additionally, programming will be required for DHSMV to accept

presale vouchers for the new specialty license plates. The DHSMV estimates programming and implementation of each new plate will cost $7,680.[61]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08056 and 320.08058.

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 Fiscal Policy on February 15, 2024:
The committee substitute creates the following new specialty license plates:

- General Aviation
- Clearwater Marine Aquarium
- United Services Organization (USO)
- Recycle Florida
- Boating Capital of the World
- Cure Diabetes
- Project Addiction: Reversing the Stigma
- The Villages: May All Your Dreams Come True

The committee substitute revises certain requirements relating to the following existing specialty license plates:

- Collegiate Plates
- Live The Dream
- Give Kids The World
- Divine Nine

CS by Transportation on January 10, 2024:
The committee substitute removes obsolete language and limits the permissible amount for administrative costs and marketing to 10 percent of annual use fees from the sale of the plate.

[61] DHSMV, *2024 Legislative Bill Analysis: SB 434* (November 13, 2023) at p. 6.

B. Amendments:

None.

246656

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (f) of subsection (8) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(8)

(f) Notwithstanding paragraph (a), on January 1 of each year, the department shall discontinue the specialty license

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plate with the fewest number of plates in circulation, including license plates exempt from a statutory sales requirement. The department shall mail a warning letter to the sponsoring organizations of the 10 percent of specialty license plates with the lowest number of valid, active registrations as of December 1 of each year. This paragraph does not apply to collegiate license plates established under s. 320.08058(3).

Section 2. Subsections (3) and (47) and paragraph (c) of subsection (101) of section 320.08058, Florida Statutes, are amended, and subsections (127) through (135) are added to that section, to read:

320.08058 Specialty license plates.—

(3) COLLEGIATE LICENSE PLATES.—

(a) The department shall develop a collegiate license plate as provided in this section for state and independent universities domiciled in this state. However, any collegiate license plate created or established after October 1, 2002, must comply with all of the requirements of s. 320.08053 except the presale requirements in s. 320.08053(2)(b) and be specifically authorized by an act of the Legislature. Collegiate license plates must bear the colors and design approved by the department as appropriate for each state and independent university. The word "Florida" must be stamped across the bottom of the plate in small letters.

(b) A collegiate plate annual use fee is to be distributed to the state or independent university foundation designated by the purchaser for deposit in an unrestricted account. The Board of Governors of the State University System shall require each state university to submit a plan for approval of the

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expenditure of all funds so designated. These funds may be used only for academic enhancement, including scholarships and private fundraising activities.

(c) If a collegiate license plate has previously been discontinued pursuant to s. 320.08056(8)(f), the college or university represented by the discontinued plate or the state in which the college or university is located may resubmit the collegiate license plate to the department for reauthorization.

(47) LIVE THE DREAM LICENSE PLATES.—

(a) The department shall develop a Live the Dream license plate as provided in this section. Live the Dream license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Live the Dream" must appear at the bottom of the plate.

(b) The proceeds of the annual use fee shall be ~~distributed to the Dream Foundation, Inc., to be~~ used in the following manner:

1. Up to 5 percent may be distributed by the department to the Martin Luther King, Jr. Center for Nonviolent Social Change, Inc., as a royalty for the use of the image of Dr. Martin Luther King, Jr.

2. All remaining annual proceeds from the sale of the plate shall be deposited into a separate account within the Operating Trust Fund within the Department of State and must be used to support the Historic Cemeteries Program established in s. 267.21. Such funds must be used to research, identify, and record abandoned African-American cemeteries and provide grants to eligible entities pursuant to s. 267.21.

~~1. Up to 5 percent may be used to administer, promote, and~~

~~market the license plate.~~

~~2. At least 25 percent shall be distributed equally among the sickle cell organizations that are Florida members of the Sickle Cell Disease Association of America, Inc., for programs that provide research, care, and treatment for sickle cell disease.~~

~~3. At least 8 percent shall be used for programs and services provided directly by the Dream Foundation, Inc., which assist inmates released from the custody of a county jail in this state or a Department of Corrections facility in successfully reentering the community.~~

~~4. At least 15 percent shall be distributed as grants for programs and services throughout this state which assist inmates released from the custody of a county jail in this state or a Department of Corrections facility in successfully reentering the community.~~

~~5. At least 20 percent shall be distributed as scholarships to graduating high school seniors in this state who have at least one parent or legal guardian who is incarcerated, for the purpose of attending a state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center under s. 1002.34. Scholarships shall be awarded through a competitive application process. Fiscal oversight of the scholarship program shall be performed by a certified public accounting firm.~~

~~6. At least 22 percent shall be distributed to Chapman Partnership, Inc., for programs that provide relief from poverty, hunger, and homelessness.~~


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~~7. Up to 5 percent may be distributed by the department on behalf of the Dream Foundation, Inc., to The Martin Luther King, Jr. Center for Nonviolent Social Change, Inc., as a royalty for the use of the image of Dr. Martin Luther King, Jr.~~

(101) DIVINE NINE LICENSE PLATES.—

(c)1. As used in this paragraph, the term "immediate relative" means a spouse, domestic partner, or child.

2. To be eligible for issuance of a Divine Nine license plate representing an organization listed in sub-subparagraphs (b)3.a.-i., a person must be a resident of this state who is the registered owner or lessee of a motor vehicle and who is either a member or an immediate relative of a member of the applicable organization. The person must ~~also~~ present the following:

a. Proof of membership in the organization, which may be established by:

(I)~~a.~~ A card distributed by the organization indicating the person's membership in the organization; or

(II)~~b.~~ A written letter on the organization's letterhead which is signed by the organization's national president or his or her designated official and which states that the person was inducted into the organization.

b. If the person is a lessee of a motor vehicle, a lease agreement and the vehicle identification number for the motor vehicle being leased.

c. If the person is an immediate relative of a member of the organization, a marriage license, a domestic partnership agreement, a birth certificate, or a record of adoption, and proof of membership as described in sub-subparagraph a. of the person's immediate relative.

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3.~~2~~. Proof of membership in an organization listed in sub-subparagraphs (b)3.a.-i. is required only for initial issuance of a Divine Nine license plate. A person need not present such proof for renewal of the license plate.

License plates created pursuant to this subsection shall have their plate sales combined for the purpose of meeting the minimum license plate sales threshold in s. 320.08056(8)(a) and for determining the license plate limit in s. 320.08053(3)(b). License plates created pursuant to this subsection must be ordered directly from the department.

(127) MARGARITAVILLE LICENSE PLATES.—

(a) The department shall develop a Margaritaville license plate as provided in this section and in s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the word "Margaritaville" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate must be distributed to the SFC Charitable Foundation, Inc., also known as Singing For Change, which may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used by the SFC Charitable Foundation, Inc., and shall be distributed with the approval of and accountability to the board of directors of the SFC Charitable Foundation, Inc., to provide grants to nonprofit organizations in communities impacted by natural or manmade disasters for recovery, rebuilding, and future sustainability in those communities, and to promote and inspire local grassroots leadership that will work to improve the quality of life in

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those communities and others in this state.

(128) GENERAL AVIATION LICENSE PLATES.—

(a) The department shall develop a General Aviation license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support General Aviation" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate must be distributed to the Aerospace Center for Excellence located in Lakeland to fund scholarships for students in this state who are pursuing careers in the field of aviation. The Aerospace Center for Excellence may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used by the Aerospace Center for Excellence for the organization's operations, activities, programs, or projects.

(129) CLEARWATER MARINE AQUARIUM LICENSE PLATES.—

(a) The department shall develop a Clearwater Marine Aquarium license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Clearwater Marine Aquarium" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Clearwater Marine Aquarium, Inc., a Florida nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, which may use up to 10 percent of the fees for the administration, promotion, and marketing of the plate. The

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remaining fees must be used by Clearwater Marine Aquarium, Inc., to fund its efforts to rescue, rehabilitate, and release marine life; provide environmental education; conduct research; and promote conservation strategies.

(130) UNITED SERVICE ORGANIZATIONS (USO) LICENSE PLATES.—

(a) The department shall develop a United Service Organizations (USO) license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the acronym "USO" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to USO Florida, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, which may use up to 10 percent of the fees for administrative costs and marketing of the plate. USO Florida, Inc., shall distribute the remainder of the fees equally among its 10 locations in this state to be used to promote the USO's mission of supporting members of the United States Armed Forces and their families through its various programs, services, and events.

(131) RECYCLE FLORIDA LICENSE PLATES.—

(a) The department shall develop a Recycle Florida license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Recycle Florida" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate must be distributed to the Recycle Florida Today Foundation, Inc., which may use up to 10 percent of such fees for administrative costs

and marketing of the plate. The balance of the fees shall be used by the Recycle Florida Today Foundation, Inc., to increase public awareness about the importance of recycling, resource conservation, and environmental stewardship; to promote robust, comprehensive, and sustainable recycling programs; and to support the professional development of persons employed in fields relating to recycling, conservation, and sustainability.

(132) BOATING CAPITAL OF THE WORLD LICENSE PLATES.—

(a) The department shall develop a Boating Capital of the World license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Boating Capital of the World" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate must be distributed to Captain Sandy Yawn, Inc., which may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used by Captain Sandy Yawn, Inc., to increase public awareness of employment opportunities in the maritime industry; to fund maritime workforce instruction and training; to promote professional development and job placement in all sectors of employment; and to support the advancement of education of trainees in the maritime industry, both at sea and on land.

(133) CURE DIABETES LICENSE PLATES.—

(a) The department shall develop a Cure Diabetes license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the

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words “Cure Diabetes” must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate must be distributed equally to the following organizations:

1. The Diabetes Research Institute Foundation, which supports the Diabetes Research Institute at the University of Miami Miller School of Medicine;

2. The Juvenile Diabetes Research Foundation; and

3. The University of Florida Foundation, Inc., which supports the University of Florida Diabetes Institute.

(c) Each organization may use up to 10 percent of the proceeds received by the organization to promote and market the plate. All remaining proceeds must be used for the purpose of funding research to cure Type 1 diabetes.

(134) PROJECT ADDICTION: REVERSING THE STIGMA LICENSE PLATES.—

(a) The department shall develop a Project Addiction: Reversing the Stigma license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word “Florida” must appear at the top of the plate, and the words “Overdose Awareness” must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Project Addiction: Reversing the Stigma, Inc., a Florida nonprofit corporation, as follows:

1. Up to 10 percent of the annual use fees may be used for the promotion and marketing costs of the license plate.

2. The remaining funds shall be distributed with the approval of and accountability to the board of directors of Project Addiction: Reversing the Stigma, Inc., and must be used

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to promote and support awareness of and education about substance use disorder and mental illness.

(135) THE VILLAGES: MAY ALL YOUR DREAMS COME TRUE LICENSE PLATES.—

(a) The department shall develop a The Villages: May All Your Dreams Come True license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "The Villages: May All Your Dreams Come True" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to The Villages Charter School, Inc., a Florida nonprofit corporation. Up to 10 percent of such fees may be used for administrative costs and marketing of the plate. The balance of the fees must be distributed with the approval of, and accountability to, the board of directors of The Villages Charter School, Inc., and must be used to provide support to The Villages Charter School, as it provides K-12 education.

Section 3. This act shall take effect October 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to specialty license plates; amending s. 320.08056, F.S.; providing that a certain discontinuation requirement for specialty license plates does not apply to collegiate license plates;


246656

amending s. 320.08058, F.S.; providing that collegiate license plates are not subject to specified presale requirements for specialty license plates; authorizing certain entities to resubmit discontinued collegiate license plates for reauthorization by the Department of Highway Safety and Motor Vehicles; revising the distribution of proceeds for the Live The Dream license plate; defining the term "immediate relative"; revising eligibility requirements for the Divine Nine license plate; directing the department to develop certain specialty license plates; providing for distribution and use of fees collected from the sale of the plates; providing an effective date.

300232

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hutson) recommended the following:

Senate Amendment to Amendment (246656) (with directory and title amendments)

Between lines 137 and 138
insert:

(107) UNIVERSAL ORLANDO RESORT ~~GIVE KIDS THE WORLD~~ LICENSE PLATES.—

(a) The department shall develop a Universal Orlando Resort ~~Give Kids The World~~ license plate as provided in this section and s. 320.08053. The plate must bear the colors and design

300232

approved by the department. The word "Florida" must appear at the top of the plate, and the words "Universal Orlando Resort" ~~"Give Kids The World"~~ must appear at the bottom of the plate.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 18 - 19

and insert:

Section 2. Subsections (3) and (47), paragraph (c) of subsection (101), and paragraph (a) of subsection (107) of section 320.08058, Florida Statutes, are

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

Delete line 310

and insert:

license plate; renaming the Give Kids the World license plate; directing the department to develop

927578

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Harrell) recommended the following:

Senate Amendment to Amendment (246656)

Delete line 249

and insert:

2. The JDRF International, Incorporated, which supports the JDRF Northern Florida Chapter; and

By the Committee on Transportation; and Senator Harrell

596-02011-24 2024434c1

A bill to be entitled

An act relating to specialty license plates; amending s. 320.08058, F.S.; directing the Department of Highway Safety and Motor Vehicles to develop a Margaritaville license plate; providing for distribution of fees collected from the sale of the plate; providing an effective date.

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

Section 1. Subsection (127) is added to section 320.08058, Florida Statutes, to read:

320.08058 Specialty license plates.—

(127) MARGARITAVILLE LICENSE PLATES.—

(a) The department shall develop a Margaritaville license plate as provided in s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the word "Margaritaville" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate must be distributed to the SFC Charitable Foundation, Inc., also known as Singing for Change, which may use up to 10 percent of such fees for administrative costs and marketing of the plate. The balance of the fees shall be used by SFC Charitable Foundation, Inc., and shall be distributed with the approval of and accountability to the board of directors of the SFC Charitable Foundation, Inc., to provide grants to nonprofit organizations in communities impacted by natural or manmade disasters for recovery, rebuilding, and future sustainability in those

Florida Senate - 2024 **CS for SB 434**

596-02011-24 2024434c1

communities, and to promote and inspire local grassroots leadership that will work to improve the quality of life in those communities and others in this state.

Section 2. This act shall take effect October 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

SB434
Bill Number or Topic

300232
Amendment Barcode (if applicable)

Name Brian Musselwhite

Phone 850-528-0561

Address 106 E College Avenue Suite 1150
Street

Email brian_musselwhite@comcast.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: Comcast NBCUniversal

☐ 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. 2020-2022JointRules.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

2/15/24
Meeting Date

FISCAL POLICY
Committee

SB 434
Bill Number or Topic

[redacted] 246656
Amendment Barcode (if applicable)

Name JUDITH RAWLS SMITH

Phone 843-388-7730

Address PO BOX 729
Street

Email JUDITHRAWLSSMITH@gmail.com

SULLIVANS ISLAND SC 29482
City State Zip

Speaking: [X] For [ ] Against [ ] Information **OR** Waive Speaking: [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[X] 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:

SINGING FOR CHANGE, INC

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. 2020-2022JointRules.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

2/15/24
Meeting Date

FISCAL POLICY
Committee

SB 434
Bill Number or Topic

[redacted]246656
Amendment Barcode (if applicable)

Name JEFF SHARKEY Phone 850 224 1600

Address 106 E College Ave #1110 Email JEFFREYSHARK@gmail.com
Street

TLH 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: MARGARITAVILLE HOLDINGS

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 476
INTRODUCER:	Fiscal Policy Committee; Judiciary Committee and Senator Grall
SUBJECT:	Civil Liability for the Wrongful Death of an Unborn Child
DATE:	February 16, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Bond	Yeatman	FP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 476 expands Florida's Wrongful Death Act to allow the parents of an unborn child to recover noneconomic damages for mental pain and suffering from a person who is responsible for the death of the unborn child. However, the mother cannot be sued in a wrongful death action for the death of her unborn child.

The bill is effective July 1, 2024.

II. Present Situation:

Most of the state's tort law is derived from the common law. At common law, there was no right to recover for the negligent wrongful death of another person.[1] Over time, however, the Legislature authorized recoveries for wrongful death and expanded the types of damages recoverable and the classes of survivors entitled to recover. "Because wrongful death actions did not exist at common law, all claims for wrongful death are created and limited by Florida's Wrongful Death Act."[2]

[1] *Louisville & Nashville Railroad Co. v. Jones*, 45 Fla. 407, 416 (Fla. 1903).
[2] *Chinghina v. Racik*, 647 So. 2d 289, 290 (Fla. 4th DCA 1994).

History of Wrongful Death Actions

The early versions of the state's wrongful death laws limited the right to recover damages to a surviving spouse, surviving children if there was no surviving spouse, those dependent upon the decedent for support if there was no one belonging to the prior two classes, and finally the executor of the decedent's estate if there was no one belonging to the prior three classes.[3] In order to show dependence on the decedent, a claimant had to show that he or she was a minor, physically or mentally disabled, or elderly.[4] Adults who were mentally and physically capable of providing for themselves could not recover despite having been supported by the decedent.[5] Any damages recoverable were limited to a form of economic damages.

The wrongful death law was substantially re-written in 1972.[6] That law created the Florida Wrongful Death Act, which provides the framework for current law. One of the major changes made by this law was to consolidate or merge survival and wrongful death actions.[7] A survival action is a legal action allowed under the survival statute to continue notwithstanding the plaintiff's death. As merged, the 1972 law allowed the statutory survivors to recover damages for their pain and suffering as a substitute for recoveries for the decedent's pain and suffering under the survival statute.[8]

The type of damages that a survivor is entitled to, under the 1972 law, depends upon the classification of the survivor. The 1972 law allows all survivors to recover the value of lost support and services, a type of economic damages. A surviving spouse may also recover loss of marital companionship and pain and suffering, types of noneconomic damages. Minor children, then defined as under age 21[9] and unmarried, may also recover loss of parental companionship and pain and suffering. The parents of a deceased minor child may also recover pain and suffering. Any survivor who paid them may recover final medical, funeral and burial expenses. The estate of the decedent may recover lost earnings from date of injury to date of death, plus net accumulations, which is essentially an estimate of the present value of the future estate that would have been available for inheritance.

A 1981 act expanded the definition of "minor children" to include all children of the decedent under age 25, regardless of whether such child is married or dependent.[10] The statutes did not authorize a wrongful death action by a nondependent, adult child for the loss of a parent or an action by a parent for the loss of an adult child.[11]

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[3] *Duval v. Hunt*, 34 Fla. 85 (Fla. 1894) (discussing a wrongful death statute enacted in 1883).
[4] *Id.* at 101-102.
[5] The Court interpreted the dependency requirement in the statute as requiring a person to have a genuine inability to support himself or herself based on the view that strong, healthy adults who are capable of earning a livelihood should not be content to "live in idleness upon the fruits of [another's] labor." *Id.* at 101.
[6] Chapter 72-35, Laws of Fla.
[7] *Sheffield v. R.J. Reynolds Tobacco Co*., 329 So. 3d 114, 121 (Fla. 2021).
[8] *Martin v. United Sec. Services, Inc.*, 314 So. 2d 765, 767 (Fla. 1975).
[9] Florida changed the age of majority from 21 to 18 in the following year, but that act did not change the reference to age 21 in the wrongful death law. Section 743.07, F.S.; chapter 73-21, Laws of Florida.
[10] Chapter 81-183, Laws of Fla.
[11] *Mizrahi v. North Miami Medical Center, Ltd.*, 761 So. 2d 1040, 1042 (Fla. 2000).

In 1990, the Legislature generally expanded the class of survivors entitled to recover damages for pain and suffering for a wrongful death.[12] As expanded, a decedent's adult children may recover damages for pain and suffering if there is no surviving spouse. The parents of an adult decedent may also recover damages for pain and suffering if there is no surviving spouse or surviving minor or adult children.[13]

Wrongful Death Actions for the Death of an Unborn Child

In 1978 the Florida Supreme Court held that an unborn fetus is not a "person" for purposes of Florida's Wrongful Death Act (Act).[14] Thus, when a person causes the death of an unborn child, the child's parents cannot recover civil damages under the Act for the death.[15]

In 1997 the Florida Supreme Court reiterated that "there is no cause of action under Florida's Wrongful Death Act for the death of a stillborn fetus."[16] However, in that same case, the Court recognized a common law action for "negligent stillbirth." The Court emphasized that the damages recoverable in such action are limited to mental pain and anguish and medical expenses incurred incident to the pregnancy, and that such legal action is different from an action under the Wrongful Death Act, as follows:

> A suit for negligent stillbirth is a direct common law action by the parents which is different in kind from a wrongful death action. The former is directed toward the death of a fetus while the latter is applicable to the death of a living person. As contrasted to the damages recoverable by parents under the wrongful death statute, the damages recoverable in an action for negligent stillbirth would be limited to mental pain and anguish and medical expenses incurred incident to the pregnancy.[17]

Therefore, Florida allows a limited recovery of damages for negligent stillbirth, but it does not recognize a cause of action for wrongful death based on the death of an unborn child.

Florida remains one of six states, including California and New York,[18] that currently do not recognize a cause of action for the wrongful death of an unborn child.[19] Forty-three states currently have some form of cause of action for the wrongful death of an unborn child. These statutes condition recovery based on the viability[20] of the child in question.[21]

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[12] Chapter 90-14, Laws of Fla.
[13] *Id.* (amending s. 768.18(3) and (4), F.S.). The adult children were also authorized by the 1990 law to recover noneconomic damages for lost parental companionship, instruction, and guidance.
[14] *Duncan v. Flynn*, 358 So. 2d 178 (Fla. 1978).
[15] *Singleton v. Ranz*, 534 So. 2d 847 (Fla. 5th DCA 1988)(citing *Duncan v. Flynn*, 358 So. 2d 178 (Fla. 1978)).
[16] *Tanner v. Hartog*, 696 So. 2d 705, 706 (Fla. 1997).
[17] *Tanner*, 696 So. 2d at 708-09.
[18] *Rosales v. Northeast Community Clinic*, B276465, 2018 WL 1633068, at *2 (Cal. Ct. App. Apr. 5, 2018); *Endresz v. Friedberg*, 24 N.Y. 2d 478, 484 (N.Y. 1969).
[19] *Stern v. Miller*, 348 So. 2d 303, 307–08 (Fla. 1977); The three other states include Iowa, Maine, and New Jersey. *Dunn v. Rose Way, Inc.*, 333 N.W. 2d 830, 831 (Iowa 1983); *Shaw v. Jendzejec*, 717 A.2d 367, 371 (Me. 1998); *Giardina v. Bennett*, 111 N.J. 412, 421–25 (N.J. 1988).
[20] "Viability" is the ability of a developing fetus to survive independent of a pregnant woman's womb. Elizabeth Chloe Romanis, *Is "viability" viable? Abortion, conceptual confusion and the law in England and Wales and the United States*, 7 J. Law. Biosci. (Jan.-Dec. 2020).
[21] Only Wyoming remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.

Fifteen states afford a cause of action for the wrongful death of an unborn child at any stage of development.[22] Several of these states, however, provide an exception so that the mother cannot be sued for the wrongful death of her unborn child.[23]

Three states, including Connecticut,[24] Georgia,[25] and Mississippi,[26] allow a wrongful death action to be brought on behalf of an unborn child if the quickening standard is met, which requires fetal movement to have been detected prior to death.[27]

Twenty-five states allow a cause of action for the wrongful death of an unborn child under a viability standard, which examines whether an unborn child can exist independently outside of the mother's womb.[28] Of these 25 states, one state, Indiana, expressly prohibits a wrongful death action if the death of an unborn child is the result of a lawful abortion.[29]

Finally, one state, Wyoming, remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.[30]

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[22] Alabama (*Hamilton v. Scott*, 97 So. 3d 728 (Ala. 2012); *Mack v. Carmack*, 79 So. 3d 597 (Ala. 2011)); Alaska (Alaska Stat. Ann. § 09.55.585); Arkansas (Ark. Code Ann. § 15-62-102); Illinois (740 Ill. Comp. Stat. Ann. 180/2.2); Kansas (Kan. Stat. Ann. § 60-1901); Louisiana (Louisiana Civil Code Art. 26); Michigan (Mich. Comp. Laws Ann. § 600.2922a); Missouri (Mo. Ann. Stat. § 1.205); Nebraska (Neb. Rev. Stat. § 30-809); Oklahoma (12 Okl. St. Ann. § 1053, OK ST T. 12 § 1053; *Pino v. United States*, 2008 OK 26, 183 P.3d 1001); South Dakota (S.D. Codified Laws §21-5-1); Texas (Tex. Civ. Prac. & Rem. Code § 71.002); Utah (*Carranza v. United States*, 2011 UT 80, 267 P.3d 912); Virginia (Va. Code. Ann. §§8.01-50); West Virginia (*Farley v. Sarti*, 195 W. Va. 671, 681 (1995)).

[23] *See* Kan. Stat. Ann. § 60-1901; Tex. Civ. Prac. & Rem. Code § 71.003.

[24] *Elderkin v. Mahoney*, No. No. CV156056191, 2017 WL 5178583 (Conn. Super. Ct. Sept. 28, 2017).

[25] *Porter v. Lassiter*, 91 Ga. App. 712 (1955); *Shirley v. Bacon*, 154 Ga. App. 203 (1980).

[26] Miss. Code Ann. § 11-7-13 (2018).

[27] Romanis, *supra*, note 20.

[28] Arizona (*Summerfield v. Superior Ct. in and for Maricopa County*, 144 Ariz. 467 (Ariz. 1985)); Colorado (*Gonzales v. Mascarenas*, 190 P. 3d 826 (Colo. App. 2008)); Delaware (*Worgan v. Greggo & Ferrera, Inc.*, 50 Del. 258 (Del. Super. Ct. 1956)); Hawaii (*Hawaii Castro v. Melchor*, 137 Hawai'i 179 (Haw. Ct. App. 2016); Idaho (*Volk v. Baldazo*, 103 Idaho 570 (Idaho 1982); Indiana (Ind. Code Ann. §34-23-2-1(b)); Kentucky (*Stevens v. Flynn*, No. 2010-CA-00196-MR, 2011 WL 3207952 (Ky. Ct. App. July 29,2011); Maryland (*Brown v. Contemporary OB/GYN Assocs.*, 143 Md. App. 199 (Md. Ct. Spec. App. 2002); Md. Code Ann., Cts. & Jud. Proc. §§ 3-902, 3-904); Massachusetts (*Thibert v. Milka*, 419 Mass. 693 (Mass. 1995)); Minnesota (*Pehrson v. Kistner*, 301 Minn. 299 (Minn. 1974)); Montana (*Blackburn v. Blue Mt. Women's Clinic*, 286 Mont. 60 (Mont.1997)); Nevada (*White v. Yup*, 85 Nev. 527 (Nev. 1969)); New Hampshire (*Wallace v. Wallace*, 120 N.H. 675 (N.H. 1980)); New Mexico (*Miller v. Kirk*, 120 N.M. 654 (N.M. 1995)); North Carolina (*DiDonato v. Wortman*, 320 N.C. 423, 358 S.E.2d 489 (1987)); North Dakota (*Hopkins v. McBane*, 359 N.W. 2d 862 (N.D. 1984); Ohio (*Griffiths v. Doctor's Hosp.*, 150 Ohio App. 3d 234, 2002-Ohio-6173, 780 N.E.2d 603 (2002)); Oregon (*LaDu v. Oregon Clinic*, P.C., 165 Or. App. 687 (Or. Ct. App. 2000)); Pennsylvania (*Coveleski v. Bubnis*, 535 Pa.166 (Pa. 1993)); Rhode Island (*Miccolis v. AMICA*, 587 A. 2d 67 (R.I. 1991)); South Carolina (*Crosby v. Glasscock Trucking*, 340 S.C. 626 (S.C. 2000)); Tennessee (Tenn. Code Ann. § 2 0-5-106(c)); Vermont (*Vaillancourt v. Med. Ctr. Hosp. Vt., Inc.*, 139 Vt. 38 (Vt. 1980)): Washington (*Baum v. Burrington*, 119 Wash. App.36 (Wash. Ct. App. 2003)); Wisconsin (*Kwaterski v. State Farm Mut. Auto. Ins. Co.*, 34 Wis. 2d 14 (Wis. 1967).

[29] Ind. Code Ann. §34-23-2-1.

[30] Wyoming has not determined whether an unborn child is a "person" under the state's Wrongful Death Act. But, the Court has held that an unborn child is not a "minor" for whom guardianship statutes authorize the appointment of a guardian. *Matter of Guardianship of MKH*, 2016 WY 103, 382 P.3d 1096 (Wyo. 2016).

III. Effect of Proposed Changes:

The bill expands Florida's Wrongful Death Act to allow the parents of an unborn child to recover noneconomic damages through the Act for mental pain and suffering from a person who is responsible for the death of their unborn child. The term "unborn child" is "a member of the species Homo sapiens, at any stage of development, who is carried in the womb." Thus, the bill authorizes a wrongful death action for an unborn child who is lost at any stage of a pregnancy.

By authorizing a wrongful death action, the parents of the unborn child will not be limited to the damages available under the common law cause of action for negligent stillbirth. The parents, instead, are authorized to recover the full measure of the economic and noneconomic damages available under the Wrongful Death Act. These damages include damages for the parents' mental pain and suffering related to the death and their future mental pain and suffering based on the life expectancy of the parents and the child.

Although the bill authorizes the parents of an unborn child to recover damages for the loss of an unborn child, the bill does not change the requirements of the Wrongful Death Act that the action be brought by the court-appointed personal representative.[31]

The bill specifies that the mother of the unborn child is not liable in a wrongful death action for the death of her unborn child.[32]

The bill is effective July 1, 2024.

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.

[31] See s. 768.20, F.S. (stating that the "action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages"). See also s. 733.301(1)(b), F.S., which establishes an order of preference for appointing personal representatives for intestate estates (persons who die without a will).
[32] Nothing in the bill appears to authorize a lawsuit for the death of an unborn child as the result of an abortion that is lawfully and non-negligently performed with the informed consent of the mother.

E. Other Constitutional Issues:

None apparent.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may increase private insurance rates to the extent that this bill provides for tort claim recoveries that are not paid under current law.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 768.18, 768.19, and 768.21.

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 Fiscal Policy on February 15, 2024:
The committee substitute defined the term "unborn child" by cross-reference to s. 775.021(5)(e), F.S., which defines the term to mean "a member of the species Homo sapiens, at any stage of development, who is carried in the womb." Accordingly, the bill with the amendment, will clarify that a wrongful death action is authorized for the loss of an unborn child at any stage of a pregnancy.

CS by Judiciary on February 5, 2024:
The committee substitute added the limitation whereby the mother is not liable for the death of her unborn child and removed a provision limiting certain recoveries where the wrongful death of the unborn child was due to medical negligence.

B. Amendments:

None.

917114

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Grall) recommended the following:

Senate Amendment (with title amendment)

Between lines 45 and 46

insert:

(6) "Unborn child" has the same meaning as in s. 775.021(5)(e).

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

And the title is amended as follows:

Between lines 5 and 6

917114

insert:

defining the term "unborn child";

By the Committee on Judiciary; and Senator Grall

590-02927-24 2024476c1

A bill to be entitled

An act relating to civil liability for the wrongful death of an unborn child; reordering and amending s. 768.18, F.S.; revising the definition of the term "survivors" to include the parents of an unborn child; amending s. 768.19, F.S.; prohibiting a right of action against the mother for the wrongful death of an unborn child; amending s. 768.21, F.S.; authorizing parents of an unborn child to recover certain damages; conforming a cross-reference; providing an effective date.

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

Section 1. Section 768.18, Florida Statutes, is reordered and amended to read:

768.18 Definitions.—As used in ss. 768.16-768.26:

(1) ~~(2)~~ "Minor children" means children under 25 years of age, notwithstanding the age of majority.

(2) ~~(5)~~ "Net accumulations" means the part of the decedent's expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of her or his estate if the decedent had lived her or his normal life expectancy. "Net business or salary income" is the part of the decedent's probable gross income after taxes, excluding income from investments continuing beyond death, that remains after deducting the decedent's personal expenses and support of survivors, excluding contributions in kind.

590-02927-24 2024476c1

(3) ~~(4)~~ "Services" means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and survivor and shall be determined under the particular facts of each case.

(4) ~~(3)~~ "Support" includes contributions in kind as well as money.

(5) ~~(1)~~ "Survivors" means the decedent's spouse, children, parents, and, when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the child born out of wedlock of a mother, but not the child born out of wedlock of the father unless the father has recognized a responsibility for the child's support. It also includes the parents of an unborn child.

Section 2. Section 768.19, Florida Statutes, is amended to read:

768.19 Right of action.—

(1) When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

(2) Notwithstanding any other provision of this act, a

wrongful death action for the death of an unborn child may not be brought against the mother of the unborn child.

Section 3. Subsection (4) and paragraph (a) of subsection (6) of section 768.21, Florida Statutes, are amended to read:

768.21 Damages.—All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

(4) Each parent of a deceased minor child or an unborn child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.

(6) The decedent's personal representative may recover for the decedent's estate the following:

(a) Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. Loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value, may also be recovered:

1. If the decedent's survivors include a surviving spouse or lineal descendants; or

2. If the decedent is not a minor child as defined in s. 768.18 ~~s. 768.18(2)~~, there are no lost support and services recoverable under subsection (1), and there is a surviving parent.

Evidence of remarriage of the decedent's spouse is admissible.

Section 4. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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2/15/2024
Meeting Date

SB476
Bill Number or Topic

Amendment 917114
Amendment Barcode (if applicable)

Committee

Name DAVID Wood KINNARD. Phone 561-714 6233

Address L
Street

West Palm Beach 33407
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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

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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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2-15-24
Meeting Date

Fiscal Policy
Committee

476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

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Committee

SB 476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

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

PLEASE CHECK ONE OF THE FOLLOWING:

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Equality Florida

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S-001 (08/10/2021)

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2-15-24
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Fiscal Policy
Committee

SB 476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

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☐ 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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S-001 (08/10/2021)

The Florida Senate

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02115124
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Fiscal Policy
Committee

SB476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

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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. 2020-2022JointRules.pdf (flsenate.gov)

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02/15/24
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Fiscal Policy
Committee

SB 476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

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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: Equality FL

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

Name Kevin Parker Phone

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City State Zip 34744

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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February 15, 2024
Meeting Date

Fiscal Policy
Committee

476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

Name Michelle Shindano

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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 Alliance of Planned Parenthood Affiliates

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/18/24
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Fiscal Policy
Committee

SB 476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

Name Parker Keaton

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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. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

2/15/23

Meeting Date

Fiscal Policy

Committee

The Florida Senate

APPEARANCE RECORD

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

SB476

Bill Number or Topic

917124

Amendment Barcode (if applicable)

Name Samira Burnside

Phone

Address

Email

Street

Tampa

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 976
Bill Number or Topic

917114
Amendment Barcode (if applicable)

Name Felix Nickel

Phone

Address
Street

Email

Seminole 33777
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/24
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

917114
Amendment Barcode (if applicable)

Name Robert Lee

Phone

Address
Street

Email

Tallahassee FL 32303
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kevin Parkes

Phone

Address
Street

Email

City State Zip 34744

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Maxx Fenning

Phone (561) 221-8809

Address 1327 Partridge Close
Street

Email maxxfenning@prismfl.org

Pompano Beach FL 33064
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/15/2024
Meeting Date

Fiscal
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Leydi Amador

Phone 786-395-7498

Address 2450 W 72nd
Street

Email leydi.flspn@floridarising.org

Hialeah FL 33016
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: FLSP

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2.15.24
Meeting Date

Civil Liability
Committee

SB476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Angelique Goduin

Phone

Address
Street

Email

Pensacola FL 32503
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/15/24
Meeting Date

Fiscal Policy
Committee

SB476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Anthony Taylor

Phone

Address

Email

Street

City FL State 33434 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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2-15-2024
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bonnie Patterson-James Phone 863 602 7429

Address 7107 Morning Dove Loop W Email
Street

Lkld FI 33809
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

February 15, 2024
Meeting Date

Fiscal Policy
Committee

476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michelle Shindano 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: Florida Alliance of Planned Parenthood Affiliates

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Steven Rocha

Phone 9544962902

Address 4381 Villeiros Ave
Street

Email stevenrocha@prismfl.org

Pompano Bch FL 33064
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:
PRISM FL

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

SB476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dr. Amy Perwien

Phone

Address
Street

Email

Naples 34119
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

02/15/24
Meeting Date

Fiscal Policy
Committee

SB476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Giancarlo Castellanos Castellanos

Phone

Address
Street

Email

Miami FL 33186
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: Equality FL.

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-15-24
Meeting Date

Fiscal Policy
Committee

476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barbara DeVane

Phone 850-251-4280

Address 625 E. Brevard St
Street

Email barbaradevane1@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:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/24
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Robert Lee

Phone

Address
Street

Email

Tallahassee FL 32303
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

FISCAL POLICY
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name TAMMY FECCI (PRONOUNCED "FECHY")

Phone

Address
Street

Email

FLORIDA CONFERENCE OF CATHOLIC BISHOPS
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: FCCB FLORIDA CONFERENCE OF CATHOLIC BISHOPS

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/24
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aaron DiPietro

Phone 904-608-4471

Address P.O. Box [redacted] 530103
Street

Email aarond@flfamily.org

Orlando FL 32853
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 Family Policy Council

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2.15.24
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kara Gross

Phone 786-363-4436

Address 4343 Flagler St
Street

Email kgross@aclufl.org

Miami FL 33134
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:
ACLU of Florida

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/15/23
Meeting Date

Fiscal Policy
Committee

SB476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Samira Burnside

Phone

Address
Street
Tolmya
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:

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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

476
Bill Number (if applicable)

Topic Unborn

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title

Address 579 E. Call St.
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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

2/15/2021
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Felix Nickel Phone

Address Email

Street
SeMinole 33777
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/15/2024
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Elijah Johnson

Phone

Address
Street

Email

St. Augustine FL
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Parker Eaton

Phone

Address

Email

Street

Tallahassee FL 32304
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-15-24
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kevonte Ford

Phone

Address
Street

Email

City State Zip 32301

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

CS/SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Labriola

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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: Christian Family Coalition Florida

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/24
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jon Harris Maurer

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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:

Equality Florida

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

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2/15/24
Meeting Date

Fiscal Policy
Committee

SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Yenisbel Villorio

Phone

Address
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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: Six Action

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

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S-001 (08/10/2021)

2/15/24
Meeting Date

Fiscal Policy
Committee

The Florida Senate

APPEARANCE RECORD

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SB 476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Laura Munoz

Phone

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:
FLSP

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

S-001

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 Fiscal Policy

BILL:	CS/SB 480
INTRODUCER:	Fiscal Policy Committee and Senator DiCeglie
SUBJECT:	Renewable Natural Gas
DATE:	February 16, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Favorable**
2.	Sanders	Betta	AEG	**Favorable**
3.	Schrader	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 480 amends s. 366.075, F.S., relating to Florida's experimental and transitional utility rates. The bill authorizes the Florida Public Service Commission (PSC) to establish an experimental mechanism to facilitate energy infrastructure investment in renewable natural gas (RNG).

The bill has an effective date of July 1, 2024.

II. Present Situation:

Florida Public Service Commission

The PSC is an arm of the legislative branch of government.[1] The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[2] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[3]

[1] Section 350.001, F.S.
[2] *See* Florida Public Service Commission (PSC), *Florida Public Service Commission Homepage*, available at http://www.psc.state.fl.us (last visited Feb. 15, 2024).
[3] PSC, *About the PSC*, available at https://www.psc.state.fl.us/about (last visited Feb. 15, 2024).

The PSC monitors the safety and reliability of the electric power grid[4] and may order the addition or repair of infrastructure as necessary.[5] The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.[6] However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[7] Municipally owned utility rates and revenues are regulated by their respective local governments. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).[8] In addition, there are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, FPUC, FPUC-Fort Meade Division, FPUC-Indiantown Division, Peoples Gas System, Sebring Gas System, and St. Joe Natural Gas Company. Of these eight gas IOUs, five engage in the merchant function servicing residential, commercial, and industrial customers: Florida City Gas, FPUC, FPUC-Fort Meade Division, Peoples Gas System, and St. Joe Natural Gas Company. Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.[9]

Electric IOU and Gas IOU rates and revenues are regulated by the PSC and the utilities must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[10]

Section 366.041(2), F.S., requires public utilities to provide adequate service to customers. As compensation for fulfilling that obligation, s. 366.06, F.S., requires the PSC to allow the IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.[11]

Public Utilities under Chapter 366, Florida Statutes

Pursuant to s. 366.02(8), F.S., "public utility," as used in ch. 366, F.S., means "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the

[4] Section 366.04(5) and (6), F.S.
[5] Section 366.05(1) and (8), F.S.
[6] Section 366.05, F.S.
[7] Florida Public Service Commission, *About the PSC*, *supra* note 3.
[8] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 5, Apr. 2023 available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf (last visited Feb. 15, 2024).
[9] *Id.* Firm transportation service is offered to customers under schedules or contracts which anticipate no interruption under almost all operating conditions. *See* Firm transportation service, 18 CFR s. 284.7.
[10] PSC, *2023 Annual Report*, p. 6, (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2023.pdf) (last visited Jan. 11, 2024).
[11] *Id.*

public within this state." However, all of the following types of utilities are exempted from this definition:

- Rural electric cooperatives.
- Municipal electric and gas utilities.
- Dependent or independent special natural gas districts.
- Any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers.
- Any entity, selling or arranging for sales of natural gas, that neither owns nor operates natural gas transmission or distribution facilities within the state.
- A person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

Experimental and Transitional Rates

Section 366.075, F.S., authorizes the PSC to approve experimental or transitional rates for the purpose of encouraging energy conservation or efficiency. This provision is used by the PSC to allow electric and natural gas utilities under its rate-regulatory jurisdiction to conduct limited scope pilot programs.

Such rates must be limited in geographic area and be for a limited period of time. The PSC may approve the area used in testing experimental rates and must specify in the order setting those rates the area that will be affected by those rates. The PSC can extend this time period "if it determines that further testing is necessary to fully evaluate the effectiveness of such experimental rates."

Renewable Energy

Section 366.91, F.S., establishes a number of renewable policies for the state. The purpose of these policies, as established in this section, states it is in the public interest to promote the development of renewable energy resources in this state.[12] Further, the statute is intended to encourage fuel diversification to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[13]

The section defines "renewable energy" as:

> [E]electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid

[12] Section 366.91(1), F.S
[13] *Id.*

manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.[14]

Renewable Natural Gas

Natural gas is a fossil energy source which forms beneath the earth's surface. Natural gas contains many different compounds, the largest of which is methane.[15] Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and hydraulic fracturing, commonly referred to as "fracking." RNG refers to biogas that has been upgraded to use in place of fossil fuel natural gas (i.e. conventional natural gas).[16]

Section 366.91, F.S., identifies sources for producing RNG as a potential source of renewable energy.[17] The section specifically defines renewable natural gas as anaerobically generated biogas,[18] landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater. Under the definition, such gas may be used as a transportation fuel or for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production facilities, and organic waste management operations.[19] Raw biogas has a methane content between 45 and 65 percent.[20] Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements. After this process, the nitrogen and oxygen content is reduced and the RNG has a methane content comparable to natural gas and is thus a suitable energy source in applications that require pipeline-quality gas, such as vehicle applications.[21]

RNG that meets certain standards qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.[22] This program was enacted by the United States Congress in order to

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[14] Section 366.91(2)(e), F.S.
[15] United States Energy Information Administration, *Natural gas explained*, Dec. 27, 2022, available at https://www.eia.gov/energyexplained/natural-gas/ (last visited Feb. 15, 2024)
[16] Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, available at https://www.epa.gov/lmop/renewable-natural-gas (last visited Feb. 15, 2024).
[17] Section 366.91(2)(e), F.S., defines "renewable energy," in part, as energy produced from biomass. Section 366.91(2)(b), F.S., defines "biomass" in part, as "a power source that is comprised of, but not limited to, combustible residues or gases from…waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas." RNG would be such a combustible gas.
[18] Section 366.91(2)(a) defines "biogas" as a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas.
[19] Environmental Protection Agency, *supra* note 16.
[20] *Id.*
[21] United States Department of Energy, *Renewable Natural Gas Production*, available at https://afdc.energy.gov/fuels/natural_gas_renewable.html (last visited Feb. 15, 2024).
[22] United States Department of Energy, *Renewable Fuel Standard*, available at https://afdc.energy.gov/laws/RFS#:~:text=The%20Renewable%20Fuel%20Standard%20(RFS,Act%20of%202007%20(EISA) (last visited Feb. 15, 2024).

reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation's renewable fuels sector.[23]

Nationally, there were 538 landfill gas facilities in operation as of August 2022, and, as of May 2022, 330 anaerobic digester systems operating at commercial livestock farms in the United States.[24] Of the more than 16,000 wastewater treatment plants in operation in the United States, approximately 1,200 have anaerobic digesters on site, and 860 of those have the equipment to use their biogas on site.[25]

FPL Woodford Decision

In *Citizens of State v. Graham*, 191 So. 3d 897 (Fla. 2016), the Florida Supreme Court found the PSC lacked statutory authority to approve cost recovery for FPL's investment in a natural gas production facility in the Woodford Shale Gas Region in Oklahoma (Woodford Project). The Woodford Project involved exploration and production of natural gas and not the purchase of actual fuel—something that would generally be within the types of activities an electric utility would engage in. The Supreme Court cited to s. 366.02(2), F.S. (2014), which defines an "electric utility" as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state," and found that the Woodford Project activities did not fall within this definition.[26]

However, in making its decision, the Supreme Court noted the following:

> This may be a good idea, but whether advance cost recovery of speculative capital investments in gas exploration and production by an electric utility is in the public interest is a policy determination that must be made by the Legislature. For example, in contrast to natural gas exploration and production, the Legislature has authorized the PSC to approve cost recovery for capital investments in nuclear power plants and energy efficient and renewable energy power sources. See ss. 366.8255; 366.92; 366.93, Fla. Stat. (2014). Without statutory authorization from the Legislature, the recovery of FPL's costs and capital investment in the Woodford Project through the fuel clause is overreach.[27]

Thus, while the Supreme Court determined that the PSC could not approve cost recovery for capital electric utility investments in natural gas production, it indicated that the Legislature has the authority to allow for such if it chose to do so.[28]

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[23] Environmental Protection Agency, *Renewable Fuel Standard Program*, available at https://www.epa.gov/renewable-fuel-standard-program (last visited Feb. 15, 2024).
[24] United States Department of Energy, *supra* note 21.
[25] *Id.*
[26] *Citizens of State v. Graham*, 191 So. 3d 897, 901-2 (Fla. 2016).
[27] *Id.* at 902.
[28] Florida Public Service Commission, *Bill Analysis for SB 1162* (Mar. 14, 2023) (on file with the Senate Regulated Industries Committee).

Biogas in Florida

According to the American Biogas Council, Florida has 70 operational biogas systems:
- 40 wastewater systems;
- 21 landfills;
- Five food waste systems; and
- Four manure processing locations.[29]

III. Effect of Proposed Changes:

Section 1 amends s. 366.075, F.S., to authorize the Public Service Commission (PSC) to establish an experimental mechanism to facilitate energy infrastructure investment in gas using the administrative proceeding structure created for storm protection plans and cost recovery in ss. 366.96, (7) and (8), F.S. As used in the section, "gas" has the meaning as the definition of renewable natural gas (RNG) provided in Section s. 366.91(2)(f), F.S.[30]

In establishing this mechanism, the PSC is to consider the intent provided in s. 366.91(1), F.S., for renewable energy. The gas infrastructure investment may include only such investments that collect, prepare, clean, process, transport, or inject gas for pipeline distribution.

The section provides that the PSC has the discretion to determine whether to use an annual proceeding to conduct such an experimental mechanism. The section also requires the PSC to propose a rule for adoption as soon as practicable, but not later than January 1, 2025.

Section 2 provides an effective date of July 1, 2024.

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.

[29] American Biogas Council at https://americanbiogascouncil.org/resources/state-profiles/florida/ (last visited Feb. 15, 2024).
[30] Section s. 366.91(2)(f), F.S. defines "renewable natural gas" as "anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline."

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public utilities will likely expand their use and sale of RNG, the costs of which will be authorized to be passed through to the utilities' customers.

C. Government Sector Impact:

The bill expands the responsibilities of the PSC. Though the PSC has not provided an analysis of this version of the bill, a similar provision is included in CS/SB 1624. In the PSC's analysis of the provision in that bill, the PSC stated that the workload may be handled with its existing level of full-time equivalent positions authorized for fiscal year 2023-2024.[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 366.075 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 Fiscal Policy on February 15, 2024:
The committee substitute deletes all provisions of the bill and adds a provision to establish an experimental mechanism to facilitate gas energy infrastructure investment using the storm protection plan administrative proceeding structure designated in ss. 366.96(7) and (8), F.S., and the legislative intent for renewable energy provided in s. 366.91(1), F.S. As used in the provision, "gas" means the definition of renewable natural

[31] Florida Public Service Commission, *Bill Analysis for CS/SB 1624*, Feb. 9. 2024 (on file with the Senate Regulated Industries Committee).

gas provided in s. 366.91(2)(f), F.S. It changes the relating to clause from "renewable natural gas" to "energy infrastructure investment."

B. Amendments:

None.

499090

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) is added to section 366.075, Florida Statutes, to read:

366.075 Experimental and transitional rates.—

(3) The commission may establish an experimental mechanism to facilitate energy infrastructure investment consistent with the structure set forth in s. 366.96(7) and (8), the intent of

499090

s. 366.91(1), and the definition of s. 366.91(2)(f). Such gas infrastructure investment may include only investments that collect, prepare, clean, process, transport, or inject gas as defined in s. 366.91(2)(f) for pipeline distribution. The commission shall have discretion to determine whether such mechanism is conducted in an annual proceeding. The commission shall adopt rules to implement and administer this subsection and shall propose such rules for adoption as soon as practicable but no later than January 1, 2025.

Section 2. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to energy infrastructure investment; amending s. 366.075, F.S.; authorizing the Public Service Commission to establish an experimental mechanism that meets certain requirements to facilitate certain energy infrastructure investment; providing requirements for gas infrastructure investments; authorizing the commission to make certain determinations regarding the experimental mechanism; requiring the commission to adopt rules and propose such rules by a specified date; providing an effective date.

360380

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (DiCeglie) recommended the following:

Senate Substitute for Amendment (499090) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) is added to section 366.075, Florida Statutes, to read:

366.075 Experimental and transitional rates; experimental mechanisms.—

(3) The commission may establish an experimental mechanism

360380

to facilitate energy infrastructure investment in gas consistent with the structure set forth in s. 366.96(7) and (8) and the intent of s. 366.91(1). Such gas infrastructure investment may include only such investments that collect, prepare, clean, process, transport, or inject gas for pipeline distribution. The commission shall have discretion to determine whether such mechanism is conducted in an annual proceeding. As used in this subsection, the term "gas" has the same meaning as the definition provided in s. 366.91(2)(f). The commission shall adopt rules to implement and administer this subsection and shall propose such rules for adoption as soon as practicable but no later than January 1, 2025.

Section 2. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to energy infrastructure investment; amending s. 366.075, F.S.; authorizing the Public Service Commission to establish an experimental mechanism that meets certain requirements to facilitate certain energy infrastructure investment in gas; providing requirements for gas infrastructure investments; authorizing the commission to make certain determinations regarding the experimental mechanism; defining the term "gas"; requiring the commission to adopt rules and propose such rules by a

specified date; providing an effective date.

By Senator DiCeglie

18-00388A-24 2024480__

A bill to be entitled

An act relating to renewable natural gas; amending s. 366.91, F.S.; authorizing a public utility to recover prudently incurred renewable natural gas infrastructure project costs through an appropriate Florida Public Service Commission cost-recovery mechanism; providing that such costs are not subject to further actions except under certain circumstances; specifying eligible renewable natural gas infrastructure projects; requiring that cost recovery for such projects be approved by the commission; providing requirements for the approval determination; prohibiting cost recovery until a facility is placed in service; providing that certain other regulatory accounting rules may apply to such cost recovery; amending s. 373.807, F.S.; revising the required contents of a basin management action plan for an Outstanding Florida Spring to include identification of certain water quality improvement projects; amending s. 403.067, F.S.; revising the required contents of a wastewater treatment plan within a basin management action plan; amending s. 403.7055, F.S.; encouraging counties and municipalities to develop regional solutions to certain energy issues; requiring the Department of Environmental Protection to provide guidelines and technical assistance to such counties and municipalities; amending s. 570.841, F.S.; authorizing the farm-to-fuel initiative to address the production and capture of renewable natural gas;

18-00388A-24 2024480__

revising the purposes of the department's statewide comprehensive information and education program; reenacting ss. 403.0671(1)(a) and (3) and 403.0673(2)(e) and (f), F.S., relating to basin management action plan wastewater reports and the water quality improvement grant program, to incorporate the amendment made to s. 403.067, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (10) is added to section 366.91, Florida Statutes, to read:

366.91 Renewable energy.—

(10) A public utility may recover, through an appropriate cost-recovery mechanism administered by the commission, prudently incurred costs for renewable natural gas infrastructure projects. If the commission determines that such costs were reasonable and that the project will facilitate achieving the goals of subsection (1), the commission must deem the project and associated costs prudent for purposes of cost recovery and may not further subject the project to disallowance except for fraud, perjury, or intentional withholding of key information by the public utility. For purposes of utility cost recovery under this subsection only, the term "renewable natural gas" may include a mixture of natural gas and renewable natural gas. Eligible renewable natural gas projects must be located within this state. Types of costs eligible for cost recovery include, but are not limited to, capital investment in projects

necessary to prepare, clean, or otherwise produce renewable natural gas for pipeline distribution and usage; capital investment in facilities, including pipelines that are necessary to inject and deliver renewable natural gas and renewable natural gas storage facilities; operation and maintenance expenses associated with any such renewable natural gas infrastructure projects; and an appropriate return on investment consistent with that allowed for other utility plants that provide service to customers. Cost recovery for any renewable natural gas infrastructure project sought pursuant to this subsection must be approved by the commission.

(a) In assessing whether cost recovery for a renewable natural gas infrastructure project is appropriate, the commission must consider whether the projected costs for such renewable natural gas infrastructure project are reasonable and consistent with this subsection.

(b) Recovery of costs incurred by a public utility for a renewable natural gas project approved for cost recovery under this subsection may not be allowed until such facility is placed in service. Upon approval of cost recovery by the commission, costs incurred before the facility is placed in service may be deferred on the public utility's books for recovery once the facility is in service. This does not preclude application of any other regulatory accounting rules that are otherwise deemed appropriate, including, but not limited to, normal recovery of costs for construction work in progress.

Section 2. Paragraph (b) of subsection (1) and subsection (3) of section 373.807, Florida Statutes, are amended to read:

373.807 Protection of water quality in Outstanding Florida

Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(1)

(b) A basin management action plan for an Outstanding Florida Spring must ~~shall~~ be adopted within 2 years after its initiation and must include, at a minimum:

1. A list of all specific projects and programs identified to implement a nutrient total maximum daily load;

2. A list of all specific projects identified in any incorporated onsite sewage treatment and disposal system remediation plan, if applicable;

3. A priority rank for each listed project;

4. For each listed project, a planning level cost estimate and the estimated date of completion;

5. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project;

6. An estimate of each listed project's nutrient load reduction;

7. Identification of each point source or category of nonpoint sources, including, but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources; ~~and~~

8. Identification of water quality improvement projects that can also produce and capture renewable natural gas through the use of anaerobic digestion or other similar treatment technologies at wastewater treatment plants, livestock farms, food production facilities, and organic waste management operations; and

9. An implementation plan designed with a target to achieve the nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan.

The department shall develop a schedule establishing 5-year, 10-year, and 15-year targets for achieving the nutrient total maximum daily load. The schedule shall be used to provide guidance for planning and funding purposes and is exempt from chapter 120.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a basin management action plan contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan must identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by

subparagraph (1)(b)9. ~~subparagraph (1)(b)8.~~ The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and

(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.

In addition to the requirements in s. 403.067, the plan must include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a basin management action plan that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial

contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

Section 3. Paragraph (a) of subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a waterbody, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the waterbody. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). When appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable

extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least 5 days, but not more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan must include all of the following:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151.

b. A description of best management practices adopted by rule.

c. For the applicable 5-year implementation milestone, a list of projects that will achieve the pollutant load reductions needed to meet the total maximum daily load or the load allocations established pursuant to subsection (6). Each project must include a planning-level cost estimate and an estimated date of completion.

d. A list of projects developed pursuant to paragraph (e), if applicable.

e. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable.

f. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement this section.

6. The basin management action plan must include 5-year milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must ~~shall~~ be conducted every 5 years, and revisions to the plan must ~~shall~~ be made as appropriate. Any entity with a specific pollutant load reduction requirement established in a basin management action plan shall identify the projects or strategies that such entity will undertake to meet current 5-year pollution reduction milestones, beginning with the first 5-year milestone for new basin management action plans, and submit such projects to the department for inclusion in the appropriate basin management action plan. Each project identified must include an estimated amount of nutrient reduction that is reasonably expected to be achieved based on the best scientific information available. Revisions to the basin management action plan must ~~shall~~ be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other

pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The department's rule relating to the equitable abatement of pollutants into surface waters does ~~do~~ not apply to water bodies or waterbody segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local

government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, which ~~that~~ addresses domestic wastewater. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; any renewable energy opportunities stemming from the production and capture of renewable natural gas; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated

through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment

and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 373.807.

10. The installation of new onsite sewage treatment and disposal systems constructed within a basin management action plan area adopted under this section, a reasonable assurance plan, or a pollution reduction plan is prohibited where connection to a publicly owned or investor-owned sewerage system is available as defined in s. 381.0065(2)(a). On lots of 1 acre or less within a basin management action plan adopted under this section, a reasonable assurance plan, or a pollution reduction plan where a publicly owned or investor-owned sewerage system is not available, the installation of enhanced nutrient-reducing onsite sewage treatment and disposal systems or other wastewater treatment systems that achieve at least 65 percent nitrogen reduction is required.

11. When identifying wastewater projects in a basin management action plan, the department may not require the higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load and meets or exceeds the pollution reduction requirement of the original project.

12. Annually, local governments subject to a basin management action plan or located within the basin of a waterbody not attaining nutrient or nutrient-related standards must provide to the department an update on the status of construction of sanitary sewers to serve such areas, in a manner

prescribed by the department.

Section 4. Section 403.7055, Florida Statutes, is amended to read:

403.7055 Methane and renewable natural gas processing and capture.—

(1) Each county and municipality is encouraged to develop ~~form multicounty~~ regional solutions to the processing, capture, and reuse or sale of methane gas and renewable natural gas as defined in s. 366.91(2) from landfills and wastewater treatment facilities.

(2) The department shall provide planning guidelines and technical assistance to each county and municipality to develop and implement such regional ~~multicounty~~ efforts.

Section 5. Section 570.841, Florida Statutes, is amended to read:

570.841 Farm-to-fuel initiative.—

(1) The department may develop a farm-to-fuel initiative to enhance the market for and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass and to enhance the value of agricultural products or expand agribusiness in this ~~the~~ state. The initiative may address the production and capture of renewable natural gas through the use of digesters and other treatment technologies at livestock farms, food production facilities, and other agricultural waste management operations.

(2) The department may conduct a statewide comprehensive information and education program aimed at educating the general public and agricultural producers about the benefits of

renewable energy and the use and production of alternative fuels.

Section 6. For the purpose of incorporating the amendment made by this act to section 403.067, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsection (3) of section 403.0671, Florida Statutes, are reenacted to read:

403.0671 Basin management action plan wastewater reports.—

(1) By July 1, 2021, the department, in coordination with the county health departments, wastewater treatment facilities, and other governmental entities, shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the costs of wastewater projects identified in the basin management action plans developed pursuant to ss. 373.807 and 403.067(7) and the onsite sewage treatment and disposal system remediation plans and other restoration plans developed to meet the total maximum daily loads required under s. 403.067. The report must include:

(a) Projects to:

1. Replace onsite sewage treatment and disposal systems with enhanced nutrient-reducing onsite sewage treatment and disposal systems.

2. Install or retrofit onsite sewage treatment and disposal systems with enhanced nutrient-reducing technologies.

3. Construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan required under s. 403.067(7)(a)9.

4. Connect onsite sewage treatment and disposal systems to domestic wastewater treatment facilities;

(3) Beginning January 1, 2022, and each January 1 thereafter, the department shall submit to the Office of Economic and Demographic Research the cost estimates for projects required in s. 403.067(7)(a)9. The office shall include the project cost estimates in its annual assessment conducted pursuant to s. 403.928.

Section 7. For the purpose of incorporating the amendment made by this act to section 403.067, Florida Statutes, in references thereto, paragraphs (e) and (f) of subsection (2) of section 403.0673, Florida Statutes, are reenacted to read:

403.0673 Water quality improvement grant program.—A grant program is established within the Department of Environmental Protection to address wastewater, stormwater, and agricultural sources of nutrient loading to surface water or groundwater.

(2) The department may provide grants for all of the following types of projects that reduce the amount of nutrients entering those waterbodies identified in subsection (1):

(e) Projects identified pursuant to s. 403.067(7)(a) or (e).

(f) Projects identified in a wastewater treatment plan or an onsite sewage treatment and disposal system remediation plan developed pursuant to s. 403.067(7)(a)9.a. and b.

Section 8. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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2/15/24
Meeting Date

Fiscal Policy
Committee

480
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dale Calhoun

Phone 8506810496

Address 201 S Monroe St Unit A
Street

Email dale.calhoun@floridagas.rg

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 Natural Gas 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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Fiscal Policy
Committee

SB 480
Bill Number or Topic

SD 360380
Amendment Barcode (if applicable)

Name Samantha Kaddis

Phone 7272420579

Address 1767 Hermitage blvd Apt. 9204
Street

Email SKaddis@gencleoaction.org

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:
gencleo Action Fund

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

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2-15-24
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EP
Committee

480
Bill Number or Topic

360380
Amendment Barcode (if applicable)

Name David Cullen

Phone 941-323-2404

Address 810 W Tharpe
Street

Email [illegible]

Tallahassee FL 32303
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: Sierra Club FL

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2-15-22
Meeting Date

400
Bill Number or Topic

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FP
Committee

499090
Amendment Barcode (if applicable)

Name DAVID CULLEN

Phone 941.323.2482

Address 316 W THARPE
Street

Email cullenasea@gmail.com

TLH FL 32303
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:

SIERRA CLUB FLORIDA

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

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S-001 (08/10/2021)

The Florida Senate

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February 15, 2024
Meeting Date

Fiscal Policy
Committee

SB 480
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tiffany Garling - FL Chamber

Phone 850-661-3339

Address 136 S. Bronough Street
Street

Email tgarling@flchamber.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 Chamber of Commerce

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/2024
Meeting Date

Fiscal Policy
Committee

480
Bill Number or Topic

Amendment Barcode (if applicable)

Name Victoria Price

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Tallahasee 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: Chesapeake Utilities Corporation

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/24
Meeting Date

Fiscal Policy
Committee

SB 480
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kevin Doyle

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Address Box 24897
Street

Email kdoyle@consumerenergyalliance.org

Jacksonville FL 32241
City *State* *Zip*

Reset Form

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:

Consumer Energy Alliance

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

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S-001 (08/10/2021)

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02/15/2024
Meeting Date

Fiscal
Committee

SB480
Bill Number or Topic

Amendment Barcode (if applicable)

Name Leydi Amador

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Address 2450 W 72nd St
Street

Email leydi.flspn@floridarising.org

Hialeah FL 33016
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: FISP

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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

480
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Adam Basford

Job Title _____

Address 516 N Adams St
Street

Phone _____

Tallahassee FL 32308
City *State* *Zip*

Email abasford@aif.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

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2/15/24
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Fiscal Policy
Committee

SB 480
Bill Number or Topic

Amendment Barcode (if applicable)

Name Laura Munoz

Phone

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:
FLSP

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/15/24
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Committee

SB 480
Bill Number or Topic

Amendment Barcode (if applicable)

Name Yenisbel Vilorio

Phone

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: Six Action

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/CS/SB 532
INTRODUCER:	Fiscal Policy Committee; Banking and Insurance Committee and Senator Brodeur
SUBJECT:	Securities
DATE:	February 16, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Favorable**
3.	Johnson	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 532 substantially revises ch. 517, F.S., the "Securities and Investor Protection Act" (Act). The Office of Financial Regulation (OFR) is responsible for administering the provisions of this chapter. The bill is based on the recommendations contained in the report issued by the Chapter 517 Task Force of the Business Law Section of The Florida Bar in coordination with the OFR.[1] The impetus for the task force is to increase the ability of small and developing Florida businesses to raise capital, while at the same time assuring and improving investor protections and enforcement measures to guard against abuse.[2] Since ch. 517, F.S., has not been substantially updated in many years, the bill also incorporates many small business financing provisions consistent with recently adopted federal rules or legislation adopted in other states. The bill includes the following changes:

Investor Protections

- Revises eligibility and recovery provisions relating to the Securities Guaranty Fund (Fund), which was created to provide relief to victims of securities violations under ch. 517, F.S., who are entitled to monetary damages or restitution but cannot recover the full amount of such damages or restitution from the wrongdoer;

[1] Report of the Chapter 517 Task Force of the Business Law Section of The Florida Bar, Recommendations and Analysis of Proposed Amendments to the Florida Securities and Investor Protection Act (Nov. 2023). The report is on file with the Florida Senate Committee on Banking and Insurance staff.

[2] *Id.*

  - The bill removes a requirement that an investor who has received a final judgement that is unsatisfied must make searches and inquires to ascertain the assets of the judgment debtor, which may result in delays. Further, the bill removes a two-year waiting period for payment;
    - The bill increases the amount an eligible person may recover from the Fund from $10,000 to $15,000, adds an exception allowing recovery of up to $25,000 if the person is a specified vulnerable or older adult, and increasing the aggregate limit on claims from $100,000 to $250,000;
- Eliminates a registration exemption for short-term notes of $25,000 or more, which have a maturity date of nine months or less. This type of offering is often the subject of abusive efforts by persons trying to evade registration requirements through the issuance of short-term notes to non-accredited investors. There is no comparable provision in the Uniform Securities Act and currently such notes cannot be sold under federal exemptions that preempt state registration;
- Excludes certain industrial revenue bonds and commercial development bonds issued by the United States or a state or local government from a registration exemption unless the bonds are guaranteed by a publicly traded entity. This exclusion is based on the increased risk to investors under such bonds, which depend upon revenue streams for their funding; and
- Requires a person who has six or more clients, rather than 15 or more clients, to register with the OFR as an investment adviser.

Access to Capital Formation and Investment Options

- Revises the regulatory provisions relating to the intrastate crowdfunding exemption. These changes include increasing the maximum offering limit from one million to five million dollars, which is consistent with the federal crowdfunding rules and reducing the technical and regulatory requirements for issuers;
- Creates the "Florida Invest Local Exemption," a micro-offering exemption that allows an issuer to offer up to $500,000 in securities to residents of Florida in reliance upon the exemption. An issuer may not accept more than $10,000 from any single purchaser, unless the purchaser is an accredited investor or other specified group, for which there are no sale limits. The issuer may engage in general advertising and general solicitation of the offering;
- Revises the limited offering exemption to require a disclosure regarding a purchaser's right of void the transaction within three days from the date of purchase, and to allow additional eligible purchasers that would be excluded for purposes of the 35 purchaser limit, consistent with the Securities and Exchange Commission rules; and
- Creates an exemption for a nonissuer transaction with a federal covered adviser managing investments in excess of $100 million, which is consistent with the provisions of the Uniform Securities Act.

Modernization of Chapter 517, F.S.

- Adopts provisions consistent with federal rules that allow issuers to have greater access to potential investors through "demo-day" presentations and the pre-offering "testing the waters" solicitations and communications, which allows an issuer to determine whether there is any interest in a contemplated offering of exempt securities prior to incurring the expense of preparing and conducting an offering;

- Eliminates the requirement that issuers of simplified securities offerings that use the Small Company Offering Registration (SCOR) must submit annual financial reports for five years;
- Adopts provisions consistent with the integration of offering federal rule that provides offers and sales of securities will not be integrated if, based on the particular facts and circumstances, the issuer can establish each offering either complies with the registration requirements of the Securities Act of 1933, or that an exemption from registration is available for the particular offering;
- Adopts an exemption for accredited investors, which is consistent with the North American Securities Administrators Association accredited investor exemption model. The provision exempts offers and sales from registration if the offers and sales are made only to persons in Florida who are, or the issuer reasonably believes are, accredited investors. This exemption is an important option for small businesses attempting to raise capital; and
- Clarifies, consolidates, and reorganizes provisions within ch. 517, F.S., and adopts provisions consistent with the Uniform Securities Act.

State Enforcement Authority

- Increases the amount of civil penalties the OFR may petition the court to impose against a defendant and authorizes the imposition of a civil penalty of twice the amount that would otherwise be imposed if a specified adult is the victim of a violation of ch. 517, F.S.
- Establishes joint and several liability for any control person who is found to have violated any provision of the Act;
- Provides a person who knowingly and recklessly provides substantial assistance to another person in violation of a provision of the Act is deemed to violate the provision to the same extent as the person to whom such assistance was provided;
- Allows the OFR to issue and serve upon a person a cease and desist order if the OFR has reason to believe the person violates any provision of the Act, as well as an emergency cease and desist order under certain circumstances; and
- Grants the OFR the authority to impose and collect an administrative fine against any person found to have violated any provision of the Act, which must also be deposited into the Anti-Fraud Trust Fund.

The bill has an indeterminate impact on state revenues and expenditures. *See* Section V. Fiscal Impact Statement below.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

Following the stock market crash of 1929, the Securities Act of 1933[3] (Act of 1933) was enacted to regulate the offers and sales of securities. The Act of 1933 requires every offer and sale of securities be registered with the Securities and Exchange Commission (SEC), unless an exemption from registration is available. The Act of 1933 requires issuers to disclose financial and other significant information regarding securities offered for public sale and prohibits deceit,

[3] Public Law 73-22, as amended through P.L. 117-268, enacted December 23, 2022.

misrepresentations, and other kinds of fraud in the sale of securities. The Act of 1933 requires issuers to disclose information deemed relevant to investors as part of the mandatory SEC registration of the securities that those companies offer for sale to the public.[4]

Registered securities offerings, often called public offerings, are available to all types of investors and have more rigorous disclosure requirements. Initial public offerings (IPOs) provide an initial pathway for companies to raise unlimited capital from the general public through a registered offering. After its IPO, the company will be a public company with ongoing public reporting requirements.[5]

By contrast, securities offerings that are exempt from SEC registration are referred to as private offerings and are mainly available to more sophisticated investors. The SEC exempts certain small offerings from registration requirements to foster capital formation by lowering the cost of offering securities to the public. Examples of exempt offerings[6] include:

- Rule 506(b) Private Placement Offerings allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials;[7]
- Rule 506(c) of Regulation D. General Solicitation Offerings allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials;[8]
- Rule 504 of Regulation D, Limited Offerings allow companies to raise up to $10 million in a 12-month period, in many cases from investors with whom the company has a relationship;[9]
- Regulation Crowdfunding offerings allow eligible companies to raise up to five million dollars in investment capital in a 12-month period from investors via an online portal;[10]
- Intrastate offerings[11] allow companies to raise capital within a single state according to state law. Many states limit the offering to between one million and five million dollars in a 12-month period; and[12]
- Regulation A offerings allow eligible companies to raise up to $20 million in a 12-month period in a Tier I offering and up to $75 million through a similar, but less extensive registered offering.[13]

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[4] *Id.*
[5] U.S. Securities and Exchange Commission (SEC), *What does it mean to be a public company?* https://www.sec.gov/education/capitalraising/building-blocks/what-does-it-mean-be-a-public-company (last visited Jan. 28, 2024).
[6] SEC, *The Laws That Govern the Securities Industry*, https://www.sec.gov/about/about-securities-laws (last visited Jan. 28, 2024). Security offerings of municipal, state, and the federal government are exempt from registration.
[7] 17 C.F.R. s. 230.506(b).
[8] 17 C.F.R. s. 230.506(c).
[9] 17 C.F.R. s. 230.504.
[10] 17 C.F.R. s. 227.100. Florida's intrastate crowdfunding law, s. 517.0611, F.S., has not been updated since it was created to reflect to reflect the increase in the maximum offering from one million to five million dollars pursuant to federal rules.
[11] Section (3)(a)(11) of the Securities Act of 1933, 17 C.F.R. s. 230.147 and 17 C.F.R. s. 230.147A
[12] SEC, 17 CFR Parts 227, 229, 230, 239, 249, 270 and 274; RIN-3235-AM27, Final rule: Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, https://www.sec.gov/files/rules/final/2020/33-10884.pdf (last visited Jan. 28, 2024).
[13] 17 C.F.R. s. 230.251.

Securities and Exchange Act of 1934

The Securities and Exchange Act of 1934 created the SEC as an independent agency to enforce federal securities laws.[14] The SEC oversees federal securities laws[15] broadly aimed at protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation.[16] The SEC has broad regulatory authority over significant parts of the securities industry, including stock exchanges, mutual funds, investment advisers, brokerage firms, as well as securities self-regulatory organizations (SROs), such as the Financial Industry Regulatory Authority, Inc. (FINRA).[17]

Federal Crowdfunding Regulations

The Jumpstart Our Business Startups Act (the "JOBS Act"),[18] establishes a regulatory structure for startups and small businesses to raise capital through exempt crowdfunded securities offerings using a funding portal.[19] Title III of the JOBS Act created a new registration exemption from federal securities law to permit the issuance, offer, and sale of up to one million dollars of crowdfunding securities per year initially, subject to specified requirements for issuers and intermediaries, and is not limited to accredited investors. However, national or interstate equity crowdfunding under Title III was not permitted until the SEC implemented Title III by final rule, which was not completed until November 16, 2015.[20] In response to the delay, a number of states, including Florida, enacted intrastate crowdfunding exemptions, which combine some elements of Title III of JOBS with s. 3(a)(11) of the Securities Act of 1933.

The final rule, Regulation Crowdfunding,[21] implements the interstate crowdfunding provisions of the JOBS Act. The regulations permit individuals to invest in securities-based crowdfunding transactions subject to certain thresholds, limits the amount of money an issuer can raise under the crowdfunding exemption at five million dollars, requires issuers to disclose certain information about their offers, and creates a regulatory framework for the intermediaries that facilitate the crowdfunding transactions. Transactions must be conducted through an intermediary registered as either a broker-dealer or a "funding portal."[22] The rules require intermediaries to:

- Provide investors with educational materials;
- Take measures to reduce the risk of fraud;
- Make available information about the issuer and the offering;
- Provide communication channels to permit discussions about offerings on the platform; and
- Facilitate the offer and sale of crowdfunded securities.[23]

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[14] Public Law 73-291, as amended through P.L. 117-328, enacted December 29, 2022.
[15] Section 15, Securities and Exchange Act of 1934.
[16] Securities and Exchange Commission, *Mission*, https://www.sec.gov/about/mission (last visited Jan. 28, 2024).
[17] National securities exchanges (e.g., the New York Stock Exchange) and clearing and settlement systems may register as SROs with the SEC or CFTC, making them subject to SEC or CFTC oversight. *See* https://www.sec.gov/rules/sro for a list of self-regulatory organizations (SROs) registered with the SEC (last visited Jan. 28, 2024).
[18] Pub. L. 112-106, *126 Stat.* 306 (2012).
[19] Title III of the JOBS Act ("Title III") added new Securities Act Section 4(a)(6), which provides an exemption from the registration requirements of Securities Act Section 5. 15 U.S.C. 77e.
[20] 80 FR 71387.
[21] 17 CFR Part 200.
[22] 17 CFR Part 227.
[23] *Id.*

In addition, Regulation Crowdfunding limits the amount a non-accredited, individual investor is allowed to invest in Regulation Crowdfunding offerings over the course of a 12-month period contingent upon the investor's net worth and annual income.[24] There are no investment limitation for accredited investors.[25]

Florida Regulation of Securities

The federal securities acts expressly allow for concurrent state regulation under blue sky laws,[26] which are designed to protect investors against fraudulent sales practices and activities. Most state laws typically require companies making offerings of securities to register their offerings before they can be sold in a particular state, unless a specific state exemption is available. The laws also license brokerage firms, their brokers, and investment adviser representatives.[27]

The Financial Services Commission (commission) is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.[28] The commission members serve as agency head for purposes of rulemaking.[29] The Office of Financial Regulation (OFR) and the Office of Insurance Regulation (OIR) are units under the commission, and each office is headed by a commissioner appointed by the commission.[30]

The scope of the OFR's jurisdiction includes the regulation and registration of the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals associated with these firms in accordance with the ch. 517, F.S.[31] The Division of Securities (division) within the OFR is responsible for administering the Securities and Investor Protection Act (Act). The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[32] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC). As of December 30, 2023, the division had total registrants in the following categories:

- Dealers: 2,393
- Investment Advisers: 8,363
- Branches: 11,701; and

[24] See 17 C.F.R. s. 227.100(a)(2).
[25] Accredited investors may, under SEC rules, participate in investment opportunities that are generally not available to non-accredited investors, including certain investments in private companies and offerings by certain hedge funds, private equity funds, and venture capital funds. Further, the rules allow investors with reliable alternative indicators of financial sophistication to participate in such investment opportunities, while maintaining the safeguards necessary for investor protection. The definition of the term, "accredited investor," is found at 17 C.F.R. s. 230.501.
[26] The term "blue sky" derives from the characterization of baseless and broad speculative investment schemes, which such laws targeted. Cornell Law School, Blue Sky Laws https://www.law.cornell.edu/wex/blue_sky_law#:~:text=In%20the%20early%201900s%2C%20decades,schemes%20which%20such%20laws%20targeted (last visited Jan. 28, 2024).
[27] SEC, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited Jan. 28, 2024).
[28] Section 20.121(3), F.S.
[29] Section 20.121(3)(a), F.S.
[30] Section 20.121(3)(a)2., F.S.
[31] Pursuant to s. 20.121(3), F.S. The jurisdiction of the OFR also includes state-chartered financial institutions and finance companies.
[32] Section 517.12, F.S.

- Associated Persons: 378,876[33]

Intrastate Crowdfunding

As noted earlier, in response to the delay in the adoption of federal rules implementing the JOBS Act, a number of states, including Florida, enacted intrastate crowdfunding exemption, which exempts issuers from federal registration if the issuer, purchaser, and securities offering are all contained within the same state, and meet other requirements.

During the 2015 Session, the Florida Legislature enacted an intrastate crowdfunding exemption.[34] The issuer, intermediary, investor, and transaction must comply with the federal intrastate exemption requirements. The law[35] exempts an issuer and the securities offering of up to one million dollars for a 12-month period, requires registration for the intermediary; and mirrors the federal investment limitations for investors at the time. The law requires issuer notice-filings and intermediary registrations with the OFR, initial and periodic disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR.

Chapter 517 Task Force of The Florida Bar Business Law Section (Task Force)

In 2022, the Executive Council of the Business Law Section of The Florida Bar created a Task Force to consider amendments to Chapter 517, F.S. In late 2023, the Task Force released its report in coordination with the OFR, which included recommendations and analysis of proposed changes.[36] The impetus for the reform is to improve the ability of small and developing businesses in Florida to raise capital, while at the same time both assuring and improving investor protection and enforcement measures to guard against abuse. Florida's securities statute has not been materially amended for many years. As a result, a number of measures taken both federally and by many states regarding small business financing have not been incorporated into Florida law.[37] Substantive, as well as technical and clarifying changes were recommended by the Task Force.

Uniform Law Commission

The Uniform Law Commission (ULC), (also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan uniform model acts. In 2002, the ULC updated the Uniform Securities Act, which provides basic

[33] Email from Ash Mason, Legislative Affairs Director, Office of Financial Regulation, to Michelle Sanders, Legislative Analyst, Senate Appropriations Committee on Agriculture, Environment and General Government (Jan. 30, 2024) (on file with Senate Appropriations Committee on Agriculture, Environment and General Government). Note: The number of securities registrations were updated from the September 30, 2023 information provided in OFR's bill analysis.
[34] Ch. 2015, Laws of Fla.
[35] Section 517.0611, F.S.
[36] Report of the Chapter 517 Task Force of the Business Law Section of The Florida Bar, Recommendations and Analysis of Proposed Amendments to the Florida Securities and Investor Protection Act (Nov. 2023). On file with Florida Senate Committee on Banking and Insurance Staff.
[37] *Id.*

investor protection from securities fraud, complementing the federal Securities and Exchange Act, and only applies to securities not regulated by the SEC.[38]

Background Screening of Regulated Entities

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through the Florida Department of Law Enforcement (FDLE), a sex offender registry check, local criminal records check, and a domestic violence check.[39] Level 2 screenings are more thorough because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through FDLE, a national criminal history records check through the Federal Bureau of Investigation (FBI), and a domestic violence check. It may also include local criminal records checks. A Level 2 screening disqualifies a person from employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.[40]

III. Effect of Proposed Changes:

Section 1 amends s. 517.021, F.S., to create the following definitions:

- "Angel investor group" means a group of accredited investors who hold regular meetings and have defined processes and procedures for making investment decisions, individually or among the membership of the group, and who are not associated persons, affiliates, or agents of a dealer or investment adviser.
- "Business entity" means any corporation, partnership, limited partnership, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, which may or may not be fictitiously named, doing business in this state.

The definition of "boiler room," is revised to reflect technological innovations in communications. The definition of the term, "boiler room" is amended to mean an enterprise in which two or more persons in a common scheme or enterprise solicit potential investors through telephone calls, e-mail, text messages, social media, chat rooms, or other electronic means.

The section also revises the definition of investment adviser for purposes of registration requirements. An investment advisor, is exempt from registration requirements if the person, during the preceding 12 months, has fewer than six clients instead of no more than 15 clients who are residents of this state. The term, "client," has the same meaning as provided in 17 C.F.R. s. 275.222-2. According to the Chapter 517 Task Force of the Business Law Section of the Florida Bar (Task Force) report, Florida is one of three states (including California and North Carolina) that have a 15 or less client exemption. Five states (Georgia, New Jersey, New York, Pennsylvania and Tennessee) have a no more than six client exemption, and all other states require registration if an adviser has a place of business in their state regardless of how many clients the adviser has.

[38] Uniform Securities Act, 2002-Uniform-Securities-Act.pdf (nasaa.org) (last visited Jan. 28, 2024).
[39] Section 435.03, F.S.
[40] Section 435.04, F.S.

An exemption from the investment advisor registration is also provided for specified governmental entities and others, which is consistent with an exemption provided in section 202(b) of the Investment Advisers Act of 1940. Registration requirements do not apply to the U.S. government, state governments and their political subdivisions, and their agencies or instrumentalities, including their officers, agents, or employees acting in their official capacities.

Exempt Securities

Section 2 amends s. 517.051, F.S., which provides exemptions based on the nature of the securities. The exemption relating to United States, state and local government securities, is revised to exclude certain industrial revenue bonds and commercial development bonds. This change is made based on the increased risk to investors holding such bonds, which are reliant upon revenue streams for their support, unless the bonds are guaranteed by a publicly traded entity described in s. 18(b)(1) of the Securities Act of 1933.

The exemption related to a security issued by a depository institution, current subsection (3), is revised to incorporate provisions found in s. 201(3)(B) of the Uniform Securities Act to provide greater clarity and specificity. The section limits the list of financial institutions to the following:

- An international bank of which the United States is a member;
- A bank organized under the laws of the United States;
- A member bank of the Federal Reserve System; or
- A depository institution when a substantial portion of the business consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

The current registration exemption provided in s. 517.051(8), F.S., for notes of at least $25,000 that have a maturity period not exceeding nine months and are sold to non-accredited investors is eliminated. According to the Task Force, this exemption has been the subject of abusive efforts by persons attempting to evade registration requirements. There is no analogy to this exemption in the Uniform Securities Act.

Section 517.051, F.S., is amended to provide that the exempt securities transactions are subject to the anti-fraud provisions of s. 517.301, F.S. Further, the section is amended to provide an exemption for all not-for-profit cooperatives. Currently, ss. 517.051(7) and 517.061, F.S., provide a registration exemption for agricultural and residential cooperatives, respectively. The residential cooperative exemption is currently a transaction exemption and is moved to new s. 517.051(8), F.S. Subsection (9) is created to provide a registration exemption for all other forms of not-for-profit cooperatives, which is consistent with the Uniform Securities Act. This provision exempts a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a not-for-profit membership entity operated either as a cooperative under the cooperative laws of a state or in accordance with the cooperative provisions of subchapter T of chapter 1 of subtitle A of the United States Internal Revenue Code, as amended, but not a member's or owner's interest, retention certificate, or like security sold or transferred to a person other than:

- A bona fide member of the not-for-profit membership entity; or

- A person who becomes a bona fide member of the not-for-profit membership entity at the time of or in connection with the sale or transfer.

Technical, clarifying changes are made to the section.

Exempt Securities Transactions

Sections 3 amends s. 517.061, F.S., to reorganize and amend the section by grouping similar types of transactions together. Except as otherwise provided in subsection (11), the exemptions from the registration requirements of s. 517.07, F.S., are self-executing and do not require any filing with the Office of Financial Regulation (OFR). However, such transactions are subject to the anti-fraud provisions of s. 517.301, F.S.

Section 517.061(1), F.S., relating to judicial approval of a securities transaction, is amended in paragraph (a) to expand the exemption to include sales effected through assignments for the benefit of creditors. New paragraph (b) exempts a transaction involving a security issued in exchange, except in a case under Title 11 of the United States Code, for one or more bona fide outstanding securities, or property interests, or partly in such exchange and partly for cash, if the terms and conditions are approved by certain governmental entities after a hearing upon the fairness of such terms and conditions. The Task Force adopted the language of the federal analog, s. 3(a)(10) of the Securities Act of 1933.

The current exemption provided in subsection (3), relating to a stock dividend or equivalent equity distribution, is amended to prohibit the giving of value by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend in the event that each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock. The subsection is modeled after the Uniform Securities Act.

The bill expands the current exemption in subsection (4), related to a transaction involving the distribution of securities among an issuer's own security holders, to include persons that at the date of the transaction are holders of options and all types of warrants. The provision is modeled after the Uniform Securities Act.

Subsection (8) expands the current exemption relating to employer-sponsored stock option plans to include any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, and requires that the employee benefit plan be contained in a record established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees.

Subsection (9) revises a current exemption, relating to the offer or sale of securities to a financial institution, to eliminate the limitation that the offers or sales of securities may not be for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading ch. 517, F.S. A general provision addresses this issue in s. 517.0613, F.S. The subsection eliminates the requirement the Financial Services Commission (commission) define "institutional investor." The term, "qualified institutional buyers," is defined in s. 517.021, F.S.

The limited offering exemption in subsection (10)(a) is amended to remove the provision prohibiting the payment of a commission or compensation for the sale of the securities in certain circumstances under the exemption relating to the offer or sale, by or on behalf of an issuer, of its own securities, where there are no more than 35 purchasers since the statute already precludes compensation to nondealers. The three-day voidable provision has been revised to limit it to three days from the date of purchase. Newly created exemptions proposed in ss. 517.0611, F.S., and 517.0612, F.S., will allow general advertising and solicitation, subject to enforcement provisions for material misstatements or omissions. The section adds certain additional purchasers to the list of excluded purchasers for purposes of the 35 purchaser limit. The added provisions have been taken from the analogous U.S. Securities and Exchange Commission (SEC) Rule 501 exclusions for counting purchasers.

The limited offering exemption is the current statute's primary registration exemption for capital-raising purposes. It was modeled after the SEC Rule 505 exemption which no longer exists. The exemption is principally used by issuers that limit their offers and sales to Florida residents. It has no monetary limitation on the issuer or any investor but is limited to no more than 35 non-accredited investors. A principal problem with this exemption has been the prohibition against any general advertising or solicitation, which substantially impairs the ability of smaller, developing companies to attract investors.

Subsection (11) substantially codifies the North American Securities Administrators Association[41] (NASAA) model accredited investor exemption. Sales of securities may only be made to persons who are, or the issuer reasonably believes are, accredited investors. The exemption is not available to an issuer that:

- Has an undefined business operation;
- Lacks a business plan;
- Lacks a stated investment goal for the funds being raised; or
- Plans to engage in a merger or acquisition with an unspecified business entity.

The model provides that a general announcement of the proposed offering, made by any means, may include only specified information. The issuer must file with the OFR a notice of transaction, a consent to service of process, and a copy of the general announcement within 15 days after the first sale in this state. The commission may adopt by rule procedures for filing documents by electronic means. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption under this rule.

Subsection (15) creates an exemption for non-issuer transactions with a federal covered adviser managing investments in excess of $100 million acting in the exercise of discretionary authority

[41] The NASAA is a nonprofit association of securities regulators in the United States, Canada, and Mexico. *Welcome to NASAA*, https://www.nasaa.org/about/ (last visited Jan. 28, 2024). NASAA, *Model Accredited Investor Exemption*, Adopted Apr. 27, 1997, *available at* https://www.nasaa.org/wp-content/uploads/2011/07/24-Model_Accredited_Investor_Exemption.pdf (last visited Jan. 28, 2024). The accredited investor (AI) exemption exempts the offer or sale of a security by an issuer from the security registration process in a transaction meeting certain requirements including that the sale of securities is limited to accredited investors and the issuer must not be subject to disqualification. The majority of states have adopted the AI exemption.

in a signed record for the accounts of others. This exemption is modeled after the Uniform Securities Act.

Subsection (16) is amended to allow the commission to recognize by rule clearinghouses able to clear option transactions for purposes of this subsection. The subsection is also amended to require that the underlying security is purchased or sold on a recognized security exchange registered under the Securities Exchange Act of 1934 and to eliminate the possibility that the underlying security instead be quoted on the National Association of Securities Dealers Automated Quotation System.

The exemption for nonissuer transactions of securities outstanding at least 90 days in subsection (18) is revised to change the conditions for eligibility. Current law requires all conditions for this exemption must be satisfied. The section is revised to retain the mandatory conditions of (a)-(c), along with either one of (d) and (e).

Subsection (20) creates an exemption for buying and selling of securities of foreign companies through foreign brokers. Non-issuer transactions in an outstanding security by or through a dealer registered or exempt from registration are exempt if:

- The issuer is a reporting issuer in Canada or in a foreign jurisdiction designated by Commission rule and the issuer has been subject to continuous reporting requirements for not less than 180 days before the transaction; and
- The security is listed on The Toronto Stock Exchange, Inc. or on a foreign jurisdiction's securities exchange that has been designated by commission rule, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing.

The OFR may revoke any designation of a securities exchange if the OFR finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

Florida Limited Offering Exemption

Section 4 amends s. 517.0611, F.S., the "Intrastate Crowdfunding Exemption." The section is substantially amended and renamed the "Florida Limited Offering Exemption" in subsection (1).

Subsection (2) is amended to provide the registration requirements of s. 517.07, F.S., do not apply to transactions conducted in accordance with this section; however, such transactions are subject to the anti-fraud provisions of s. 517.301, F.S. Currently, the section specifies an offer or sale of a security conducted in accordance with this section is an exempt transaction under s. 517.061, F.S., and the exemption may not be used in conjunction with any other exemption under ss. 517.051 or 517.061, F.S.

Subsection (3) requires the offer or sale of securities under this section be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), 17 CFR s. 230.147 or 17 CFR 230.147A, which is being added. In 2016, the SEC adopted Rule 147A, a new intrastate offering exemption, which is substantially identical to Rule 147 except Rule 147A:

- Allows offers to be accessible to out-of-state residents, so long as sales are only made to in-state residents;
- Permits a company to be incorporated or organized out-of-state, so long as the company has its "principal place of business" in-state and satisfies at least one "doing business" requirement that demonstrates the in-state nature of the company's business; and
- Allows issuers to engage in general solicitation and general advertising of their offerings, using any form of mass media, including unrestricted, publicly-available Internet websites, so long as sales of securities so offered are made only to residents of the state or territory in which the issuer has its principal place of business.

Subsection (4) revises issuer requirements in the following manner:

- The issuer must be a for-profit business entity that maintains its principal place of business and derives its revenues primarily from operation in this state. Under current law, the entity is required to be formed under the laws of the state, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state;
- An issuer must conduct transactions for an offering of $2.5 million or more through a dealer or intermediary registered with the OFR. For an offering of less than $2.5 million, the issuer may, use such a dealer or intermediary. Under current law, an issuer must use a registered dealer or intermediary regardless of the amount of the offering;
- The issuer may not be subject to a disqualification established by the commission or the OFR or a disqualification described in s. 517.1611, F.S., or newly created s. 517.0616, F.S. Each director, officer, manager, managing member, or general partner, or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the equity interest of the issuer, is subject to this requirement. Section 517.0616, F.S., references disqualifications under 17 C.F.R. s. 230.506(d); and
- The issuer must deposit all funds received from investors in an account in a federally insured financial institution authorized to do business in this state. Further, an issuer must maintain all such funds in the account until the target offering amount is reached or the offering amount has not been reached within the period specified. Currently, an issuer must execute an escrow agreement with a federally insured financial institution authorized to do business in the state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount.

Subsection (5) requires an issuer to file a notice of the offering with the OFR together with a $200 nonrefundable filing fee. The disclosures required to be included in the notice form are revised in the following manner:

- Eliminates the attestation requirement. Currently, the notice must contain an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit; and
- Must state the target offering amount as well as the date, not to exceed 365 days, by which the target amount must be reached in order to avoid termination of the offering.

Subsection (6) requires an issuer to amend the notice form within 10 business days instead of 30 days after any material information becomes inaccurate.

Subsection (7) authorizes an issuer to engage in general advertising and general solicitation of the offer to prospective investors. Any oral or written statements in advertising or solicitation of the offer are subject to enforcement under ch. 517, F.S. Any general advertising or other general announcement must state that the offering is limited and open only to residents of this state.

Subsection (8) is amended to require an issuer to provide a disclosure statement to the dealer or intermediary, as applicable: to the OFR at the time that the notice is filed and to each prospective investor at least three days before the investor's commitment to purchase or payment of any consideration. The disclosure statement must contain material information about the issuer and the offering. The bill provides the following changes:

- The statement must also include the email address of the issuer. Currently, the name, legal status, physical address, and website address of the issuer are required;
- The disclosure of the names of the managers, managing members, and general partners are added. Currently, the names of the directors, officers, and any person occupying a similar status or performing a similar function, and the name of each person holding more than 20 percent of the issuer's equity interests are required to be disclosed;
- The regular updates of the issuer regarding the progress in meeting the target offering amount is eliminated;
- The methodology for determining the price is eliminated and the requirement that prior to the sale, the investor must receive in writing the final price and all required disclosures and have an opportunity to rescind the commitment to purchase the securities;
- A description of the ownership and capital structure of the issuer is revised to eliminate the disclosure of the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer; how the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future; and the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties;
- The bill adds a statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitations on resale contained in SEC Rule 147 or Rule 147A;
- The bill adds a disclosure regarding any issuer plans to offer additional securities in the future;
- The bill adds a disclosure about the risks to purchasers of the securities relating to the minority ownership in the issuer; and
- A description of the financial condition of the issuer.
    - The bill provides for offering amounts of $500,000 or less, the inclusion of financial statements of the issuer are optional. Under current law, certified financial statements and the most recent tax return filed by the issuer are no longer required. Further, for offerings that within the preceding 12-month period, have target offering amounts of $100,000 or less, the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects.

- The bill provides for offering amounts of more than $500,000 but not more than $2.5 million, the description must include financial statements reviewed by a certified public accountant. Currently, for offerings within the preceding 12-month period, have target offering amounts of $100,001 - $500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the office, by rule, for such purpose.
- The bill provides for offerings of more than $2.5 million, the description must include audited financial statements. Under current law, for offerings within the preceding 12-month period, have target offering amounts of more than $500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant who is independent of the issuer, and other requirements as the commission may establish by rule.

The bill provides the following additional statement must appear on the front page of the disclosure statement:

> Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this disclosure statement is truthful or complete. Any representation to the contrary is a criminal offense under Chapter 517, Florida Statutes.

The foregoing statement is added to the following statement which must be provided under current law. Both the previous and the following statement must appear in boldface, conspicuous type on the front page of the disclosure statement:

> These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

Subsection (9) is amended to increase the cap for an offering from one to five million dollars. Offers or sales to a person owning 20 percent or more of the equity of any class or classes of securities or to an officer, director, partner, manager, managing member, general partner or trustee, or a person occupying a similar status, do not count toward this limitation.

Subsection (10) is revised to provide that sales of securities to non-accredited investors in a 12-month period may not exceed $10,000. Currently, this calculation is based on the income and net worth of a non-accredited investor.

Current subsection (11) is eliminated, which requires the issuer to file with the OFR and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days after the end of its fiscal year, until no securities under this offering are outstanding. The annual reports must meet specified requirements.

The new subsection (11), authorizes the OFR to summarily suspend a notice filing if the payment for the filing is dishonored by the financial institution upon which the funds are drawn or if the issuer made a material false statement in the issuer's notice-filing. A material false statement made in the issuer's notice-filing results in a final order by the OFR revoking the notice-filing, issuing a fine and permanent bar to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer. The subsection provides technical conforming changes.

Subsection (12), relating to the duties of an intermediary, is revised, to provide if the issuer employs the services of an intermediary, the intermediary must take measures, as established by commission rule, to reduce the risk of fraud with respect to the offering. Under current law, the intermediary must, with respect to transactions, verify the issuer is in compliance with the requirements of this section and, if necessary, deny an issuer access to its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential offering.

The subsection revises the provision relating to the information an intermediary must obtain from investors to document residency or status as an accredited investor. The bill requires an intermediary to obtain from each prospective investor a zip code or residence address, a copy of a driver license, and any other proof of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of this state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor. The intermediary must obtain information sufficient for the issuer or intermediary to reasonably believe that a particular prospective investor is an accredited investor.

The subsection eliminates the requirement that an intermediary must obtain an affidavit from each investor regarding their income. Currently, an intermediary must obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements. The bill provides conforming changes to eliminate requirements relating to escrow funds and escrow agreements.

The subsection eliminates the following duties of an intermediary:

- Require each investor to certify in writing that the investor understands the risks of investing, the terms of the offering, and the limitations on resale;
- Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity;
- Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; the anti-money laundering requirements applicable to registered brokers; and privacy requirements; and
- Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

Subsection (14) provides if the issuer does not employ a dealer or an intermediary for an offering created pursuant to this section, the issuer may not:

- Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website;
- Hold, manage, possess, or otherwise handle investor funds or securities;
- Compensate promoters, finders, or lead generators for providing personal identifying information of any potential investor; or
- Engage in any other activities set forth by commission rule.

Subsection (15) provides any sale made pursuant to the exemption created under this section is voidable by the purchaser within three days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure statement that is provided to the purchaser or purchaser's representative or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in the disclosure statement. Under current law, an investor may cancel a commitment to invest within three business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.

Florida Invest Local Exemption

Section 5 creates s. 517.0612, F.S., the "Florida Invest Local Exemption," a micro-offering exemption. The section provides the registration provisions of s. 517.07, F.S., do not apply to a securities transaction conducted in accordance with this section. However, such transactions are subject to the anti-fraud provisions of s. 517.301, F.S. The bill:

- Requires the offer or sale of securities under this section must meet the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, Securities and Exchange Commission Rule 147, or Securities and Exchange Commission Rule 147A;
- Requires the issuer to be a for-profit business entity registered with the Department of State with its principal place of business in this state. The issuer cannot be, either before or as a result of the offering:
  - An investment company as defined in the Investment Company Act of 1940, as amended;
  - Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;
  - An organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity, or
  - Subject to a disqualification pursuant to s. 517.0616, F.S.;
- Provides the sum of all cash and other consideration received for all sales of the security in reliance upon this exemption may not exceed $500,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption;
- Provides the issuer may not accept more than $10,000 from any single purchaser unless:
  - The issuer reasonably believes the purchaser is an accredited investor;

  - The purchaser is an officer, director, partner, or trustee of an individual occupying a similar status or performing similar functions of the issuer; or the purchaser is an owner of 10 percent or more of the issuer's outstanding equity.
    - Any relative, spouse, child or family relative who has the same primary residence of the purchaser shall collectively be treated as a single purchaser; or
    - Any business entity of which the purchaser and any person related to the purchaser collectively owns more than 50 percent of the equity interest must be treated collectively as a single purchaser.
- Authorizes an issuer to engage in general advertising and general solicitation of the offering. Any general advertising or other general announcement must state that the offer is limited and open only to residents of the state. Written or oral statements made in the advertising or solicitation of the offer are subject to the enforcement provisions of this chapter;
- Requires a purchaser to receive, at least three business days prior to any binding commitment to purchase or consideration paid, a disclosure document which sets forth material information of the issuer, including but not limited to the following:
  - Issuer's name, form of entity and contact information.
  - The name and contact information of each director, officer or other manager of the issuer.
  - A description of the issuer's business.
  - A description of the security being offered and the total amount of the offering.
  - The intended use of proceeds from the sale of the securities.
  - The target amount of the offering.
  - A statement that if the target amount is not obtained in cash or the value of other tangible consideration received within a date that is no more than 180 days after the commencement of the offering, the offering will be terminated, and any funds or other consideration received from purchasers shall be promptly returned.
  - A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in 17 C.F.R. s. 230.147 or 17 C.F.R. s. 230.147A.
  - The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the issuer.
  - The depository institution into which investor funds will be deposited.
  - A statement in boldface type that reads: "Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense;"
- Requires all funds received from investors must be deposited into a depository institution authorized to do business in Florida. The issuer may not withdraw any amount of the offering proceeds unless and until the target amount has been received;
- Requires the issuer to file a notice of the offering with the OFR, in writing or in electronic form, in a format prescribed by commission rule, no less than five business days before the offering commences, along with the disclosure document. The issuer must, within three business days, file an amended notice if there are any material changes to the information previously submitted;
- Provides an individual, entity, or entity employee who acts as an agent for the issuer in the offer or sale of securities under this exemption and is not registered as a dealer or intermediary under this chapter may not:

  - Receive compensation based upon the solicitation of purchases, sales, or offers to purchase the securities, or
  - Take custody of investor funds or securities; and
- Provides any sale, made pursuant to this exemption, is voidable by the purchaser, within three days after the first tender of consideration is made by such purchaser to the issuer, by notifying the issuer that the purchaser expressly voids the purchase by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or purchaser's representatives or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in such disclosure document.

Section 6 creates s. 517.0613, F.S., relating to the failure to comply with a securities registration exemption. This provision is similar to SEC Rule 500 in Regulation D. The section clarifies that an issuer who fails to comply with any exemption from securities registration is not precluded from claiming the availability of any other applicable state or federal exemption.

Further, the section provides that ss. 517.061, 517.0611, and 517.0612, F.S., are not available to an issuer for any transaction or chain of transactions that, although in technical compliance with the applicable provisions, is part of a plan or scheme to evade the registration provision of s. 517.07, F.S., and registration under s. 517.07, F.S., is required in connection with such transaction.

Section 7 creates s. 517.0614, F.S., a stand-alone integration provision, which is consistent with 17 CFR s. 230.152, the SEC's integration rule, and is applicable to all issuer capital raising exemptions.

SEC Rule 152 significantly reduces the threat to companies, especially smaller ones that have continuing and sporadic needs for capital, that multiple offerings will be integrated as one, with the result that otherwise distinct valid exempt offerings will be deemed in violation of the registration provisions.

SEC Rule 152 provides a framework for determining whether multiple securities transactions should be considered part of the same offering and contains four non-exclusive safe harbors from integration. Offerings may not be integrated if, based on particular facts and circumstances, the issuer can establish either that each offering complies with the registration requirements of ch. 517, F.S., or that an exemption from registration is available for the particular offering, provided that any transaction or series of transactions that, although in technical compliance with ch. 517, F.S., is part of a plan or scheme to evade the registration requirements of ch. 517, F.S., will not have the effect of avoiding integration.

For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering, that the issuer or any person acting on the issuer's behalf:

- Did not solicit such purchaser through the use of general solicitation; or
- Established a substantive relationship with such purchaser before the commencement of the exempt offering, provided that a purchaser previously solicited by general solicitation is not deemed to have been solicited through the use of general solicitation in the current offering if, during the 45 calendar days following such previous general solicitation:

- No offer or sale of the same or similar class of securities has been made by or on behalf of the issuer, including to such purchaser; and
- The issuer or any person acting on the issuer's behalf has not solicited such purchaser through the use of general solicitation for any other security

Communication and Solicitation of Potential Investors

Section 8 creates s. 517.0615, F.S., relating to solicitation of interest, to authorize an issuer to solicit potential investors under limited circumstances consistent with federal rules. Subsection (1) adopts provisions consistent with the federal "Demo Day Presentations" rule.[42] The subsection provides pre-offering communications made by an issuer in connection with a demo day presentation are not deemed to constitute general solicitation if the communications are made in connection with such an event or presentation being sponsored by a college, university, or other institution of higher education, a state or local government or instrumentality of a state or local government, a nonprofit organization, or an angel investor group, incubator, or accelerator; provided that advertising for the event does not reference any specific offering of securities by the issuer; and the sponsor of the meeting or seminar does not:

- Make investment recommendations or provide investment advice to attendees of the event;
- Engage in any investment negotiations between the issuer and investors attending the event;
- Charge attendees of the event any fees, other than reasonable administrative fees;
- Receive any compensation for making introductions between event attendees and issuers, or for investment negotiations between the parties; or
- Receive any compensation with respect to the event that would require registration or notice filing under the securities laws. The sponsorship of or participation in the seminar or meeting does not by itself require registration or notice-filing under ch. 517, F.S.

Information regarding an offering of securities by the issuer which is communicated or distributed by or on behalf of the issuer in connection with a seminar or meeting is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, the intended use of the proceeds of the offering, and the unsubscribed amount in an offering. If the event allows attendees to participate virtually, rather than in person, online participation in the seminar or meeting is limited to certain specified participants.

Subsection (2) adopts provisions consistent with SEC Rule 241,[43] which allows "testing the waters" by an issuer in advance of making any offering. An issuer or their representative may communicate orally or in writing to determine whether there is any interest in a contemplated offering of securities exempt from federal registration requirements. The rule provides an exemption only with respect to the generic solicitation of interest. This will allow issuers to gauge the feasibility and market interest in a securities offering prior to incurring the time and expense of a preparing and conducting an offering. The solicitation or acceptance of money or other consideration or commitment from any person is prohibited.

[42] 17 C.F.R. s. 230.148.
[43] 17 CFR s. 230.241.

SEC Rule 241 further requires the testing-the-waters materials to provide specified disclosures notifying potential investors about the limitations of the generic solicitation. The issuer's communications must state the following:

- No money or other consideration is being solicited, and if sent in response, will not be accepted;
- No offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and
- A person's indication of interest involves no obligation or commitment of any kind.

Any written communication may include a means for a person to indicate interest in a potential offering and an issuer may require such indication to include the person's name, address, telephone number, or email address in any response form included in the written communication.[44] A communication in accordance with the "testing the waters" provision is not subject to s. 501.059, F.S., regarding telephone solicitations.

Section 9 creates s. 517.0616, F.S., relating to issuer disqualifications, to provide a registration exemption under s. 517.061(9), (10), and (11), s. 517.0611, or 517.0612, F.S., is not available to an issuer that would be disqualified under 17 C.F.R. s. 230.506(d) at the time the issuer makes an offer for the sale of a security. "Bad actor" disqualifying events include, but are not limited to:

- Specified relevant criminal convictions, certain court injunctions and restraining orders, and final orders of certain state and federal regulators;
- Certain SEC (Securities and Exchange Commission) disciplinary orders;
- Certain SEC cease-and-desist orders; and
- Suspension or expulsion from membership in a self-regulatory organization (SRO), such as FINRA, or from association with an SRO member.

Section 10 revises s. 517.081, F.S., relating to securities registration requirements. To provide greater clarity, the provisions relating to the rulemaking authority of the commission are consolidated and revised within the section. The section eliminates the five-year annual financial reporting requirements for Small Company Offering Registration (SCOR) and the prohibition against a person using the SCOR registration method for the resale of securities, which will allow non-control persons to resell securities through a Florida-based registration process.

Under current law, the commission must adopt a form for a simplified offering circular to register securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed five million dollars. The simplified offering circular is synonymous with a SCOR under the Securities Act of 1933.[45] To qualify for use of the simplified offering circular, the issuer must:

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[44] The SEC, *Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, A Small Entity Compliance Guide* (Mar. 10, 2021), https://www.sec.gov/corpfin/facilitating-capital-formation-secg (last visited Jan. 28, 2024).

[45] SCOR was designed for use by companies seeking to raise capital through a public offering of securities exempt from registration with the SEC under the Securities Act of 1933 pursuant to Rule 504 of Regulation D, Rule 147, or 147A.

- File an annual financial report with OFR that contains a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year (and if the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited); and
- File annual financial reports with OFR for each of the first five years following the effective date of the registration.

Section 11 amends s. 517.101, F.S., relating to consent to service, to expand the type of persons who are eligible to sign the written consent on behalf of a business entity to include directors, managers, managing members, general partners, trustees, or officers of the issuer.

The bill also expands the persons who can authorize the signer to execute the written consent to include the issuer's general partners and managing members. Under current law, an issuer is required, upon any initial application for registration under the act or upon request of the OFR, to file with such application the irrevocable written consent to service. The written consent must be authenticated by the seal of said issuer (if it has a seal), and by the acknowledged signature of a member of the co-partnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, and such consent to service must be duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association (and such resolutions must be filed as a certified copy with the written consent to service).

Securities Guaranty Fund (Sections 12 and 13)

Section 12 amends s. 517.131, F.S., relating to the Securities Guaranty Fund (Fund), to revise eligibility requirements and provide technical changes. In subsection (1), the definition of the term, "final judgment," is amended to also include an arbitration award confirmed by a court of competent jurisdiction. The subsection is also amended to eliminate the requirement that the wrongdoer be a dealer, investment adviser, or associated person registered under ch. 517, F.S.

Subsection (2) is amended to specify the purpose of the Fund is to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the wrongdoer.

Subsection (3) is amended to require that a person must meet the following conditions to be eligible for payment from the Fund, if the person:

- Holds an unsatisfied final judgment entered on or after October 1, 2024, in which a wrongdoer was found to have violated ss. 517.07, F.S., or 517.301, F.S.;
- Has applied any amounts recovered from the judgment debtor or from any other source to the damages awarded by the court or arbitrator; and
- Is a natural person who was a resident of this state, or is a business entity that was domiciled in this state, at the time of the violation giving rise to the claim; or
- Is a receiver appointed pursuant to s. 517.191(2), F.S., by a court of competent jurisdiction for a wrongdoer order to pay restitution under s. 517.191(3), F.S. as a result of a violation of ss. 517.07, F.S., or 517.301, F.S., which has requested payment from the Fund on behalf of an eligible for payment.

If a person holds an unsatisfied final judgement entered before October 1, 2024, in which a wrongdoer was found to have violated s. 517.07 or s. 517.301, such a person's claim for payment from the Securities Guaranty Fund is governed by the terms of this section and s. 517.141. F.S., which were effective on the date of such final judgement.

Under current law, for a person to be eligible to receive payment from the Fund, the following requirements must be met:

- The act for which recovery is sought occurred on or after January 1, 1979;
- The person has received final judgement from a court that a violation of ss. 517.07 or 517.301, F.S., occurred for which monetary damages are awarded;
- The person has made all reasonable searches and inquiries to ascertain whether the violator possesses assets that can be sold in satisfaction of the damages awarded, and in such search has discovered no or insufficient assets; and
- The person has applied any amounts recovered from the violator, or from any other source, to the damages awarded by the court.

Subsection (4) is created to prohibit a person from being eligible for payment from the Fund if the person has:

- Participated or assisted in a violation of ch. 517, F.S.;
- Attempted to commit or committed a violation of ch. 517, F.S.; or
- Profited from a violation of ch. 517, F.S.

Subsection (5) provides an eligible person, or a receiver on behalf of an eligible person, seeking payment from the Fund must submit a written application within one year after the date of the final judgement, the date on which a restitution order has been ripe for execution, or the date of any appellate decision, and at a minimum, must contain certain specified information. The application must contain such information as the OFR may require, including, but not limited to:

- The full name, address, and contact information of the eligible person and, if applicable, the receiver;
- The person ordered to pay restitution;
- If the eligible person is a business entity, the eligible person's form and place of organization and a copy of the business entity's articles of incorporation, its articles of organization with amendments, trust agreement, or its partnership agreement;
- A copy of the final judgment;
- A copy of any restitution ordered pursuant to s. 517.191(3), F.S.;
- An affidavit stating either one of the following:
    - The eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment and, by the eligible person's search, that the eligible person has not discovered any property or assets.
    - The eligible person has taken necessary action on the property and assets of the wrongdoers but the final judgment remains unsatisfied;
- An affidavit from the receiver stating the amount of restitution owed to the eligible person on whose behalf the claim is filed; the amount of any money, property, or assets paid to the eligible person on whose behalf the claim is filed by the person over whom the receiver is

appointed; and the amount of any unsatisfied portion of any eligible person's order of restitution;
- The eligible person's residence or domicile at the time of the violation of ss. 517.07, F.S., or 517.301, F.S., which resulted in the eligible person's monetary damages;
- The amount of any unsatisfied portion of the eligible person's final judgment; and
- Whether an appeal or motion to vacate an arbitration award has been filed.

Subsection (6) provides if the OFR finds that a person is eligible and if the person has complied with the provisions of this section, the OFR must approves a person for payment from the Fund within 90 days after the OFR's receipt of a complete application. Each eligible person or receiver must be given written notice, personally or by mail, that the OFR intends to approve or deny, or has approved or denied, the application for payment from the Fund.

The current provision in s. 517.141(9), F.S., which requires an eligible person or receiver to assign all right, title, and interest in the final judgment or order of restitution, to the extent of such payment to the OFR upon receipt of the notice indicating the OFR's intent to approve an application for payment from the Fund and before any disbursement, is transferred to s. 517.131, F.S.

Subsection (7) provides upon receipt of the OFR's decision to approve an application for payment from the Fund, and prior to any disbursement, the eligible person or receiver is required to assign all right, title, and interest in the final judgment or order of restitution equal to the amount of such payment to the OFR, on a form prescribed by commission rule.

Subsection (8) provides the OFR will deem an application for payment from the Fund abandoned if the eligible person or receiver, or any person acting on behalf of the eligible person or receiver, fails to timely complete the application as prescribed by commission rule. The time period to complete an application is tolled during the pendency of an appeal or motion to vacate an arbitration award.

Section 13 amends s. 517.141, F.S., relating to payments from the Fund. The following terms are defined:
- "Claimant" means a person determined eligible for payment under s. 517.131 that is approved by the office for payment from the Fund;
- "Specified adult" has the same meaning as in s. 517.34(1), F.S.; and
- "Final judgment" has the same meaning as in s. 517.131(1), F.S.

The bill also provides a claimant is entitled to disbursement from the Fund in the amount equal to lesser of:
- The unsatisfied portion of the claimant's final judgment or final order or restitution, but only to the extent that the final judgment or final order of restitution reflects actual or compensatory damages, excluding post-judgment interest, costs and attorneys fees; or
- The sum of $15,000; or
- If the claimant is a specified adult or if a specified adult is a beneficial owner or beneficiary of the claimant, the sum of $25,000.

Current law allows for the unsatisfied portion of a judgment or $10,000, whichever is less. The aggregate limit on claims is increased from $100,000 to $250,000.

The bill provides if at any time the balance of the Fund is insufficient to satisfy a valid claim or portion thereof approved by the OFR, the OFR must satisfy the unpaid claim or portion of the valid claim as soon as a sufficient amount of money has been deposited into or transferred to the Fund. If more than one unsatisfied claim is outstanding, the claims must be paid in the sequence in which claims were approved by final order of the OFR, as long as such final order is not subject to appeal or other pending proceeding.

All payments made from the Fund must be made by the Chief Financial Officer upon authorization by the OFR. The OFR must submit authorization within 30 days after the approval of an eligible person for payment from the Fund.

The two-year payment waiting period prior to payment is eliminated. Technical conforming changes are made to the section to include final orders of restitution in addition to final judgments.

The section provides if a claimant knowingly and willfully files or causes to be filed an application under s. 517.131, F.S., or documents in support of the application, any of which contain false, incomplete, or misleading information in any material aspect, the claimant forfeits all payments from the Fund and that such act violates s. 517.301(1)(c), F.S.

The Department of Financial Services (DFS), instead of the OFR, is authorized to institute legal proceedings to enforce compliance with s. 517.131, F.S., and to recover moneys owed to the Fund, and to recover interest, costs, and attorney's fees in any action brought pursuant to this section in which the DFS prevails.

OFR Enforcement Authority

Section 14 amends s. 517.191, F.S., relating to enforcement by the OFR and the Attorney General.

The amount of a civil penalty against a natural person found to have violated any provision of this chapter, other than s. 517.301, F.S., is increased from $10,000 to $20,000. Further, the civil penalty must be the greater of the specified amount or the amount of any pecuniary loss to the investor or pecuniary gain to a business entity. Further, the section is amended to allow for a civil fine of twice the amount that would otherwise be imposed if a specified adult, i.e., a natural person 65 years of age or older, or a vulnerable adult, is a victim of a violation of this chapter.[46] The OFR is authorized to recover any costs and attorney fees related to the OFR's investigation or enforcement of ch. 517, F.S., in an action for injunctive relief or the OFR's enforcement of any restraining order or injunction. Any costs and attorney fees collected must be deposited in the Anti-Fraud Trust Fund.

[46] The act defines "specified adult" as a natural person 65 years of age or older, or a natural person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. See s. 517.34(1)(b), and s. 415.102(28), F.S.

The section authorizes the OFR to apply to the court for an order directing the defendant to make restitution of those sums shown by the OFR to have been obtained in violation of the Act. The OFR may also petition the court to impose a civil penalty against the defendant in an amount not to exceed:

- $20,000 for a natural person or $25,000 for a business entity, or the gross amount of pecuniary loss to investors or pecuniary gain to a natural person or business entity for each such violation, other than a violation of s. 517.301, F.S.; or
- Plus the greater of $50,000 for a natural person or $250,000 for a business entity, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity for each violation of s. 517.301, F.S.; or
- Twice the amount of the civil penalty that would otherwise be imposed, if the victim is a specified adult.

The OFR may recover costs and attorney fees related to any investigation or enforcement. Any moneys recovered by the OFR must be deposited into the Fund.

The OFR is authorized to hold any control person who controls any person found to have violated ch. 517, F.S., or of any rule adopted thereunder, jointly and severally liable with, and to the same extent as, such controlled person in any action brought under this section unless the control person acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action. This provision is found in the federal securities statutes and is also found in the Uniform Securities Act and laws in other states. The provision provides a defense for control persons who are able to show that they were not responsible for the controlled person's act that resulted in a securities law violation.

Further, the bill authorizes the OFR to hold a person who knowingly or recklessly provides substantial assistance to another person in violation of ch. 517, F.S., or of any rule adopted thereunder, liable to the same extent as the person to whom such assistance is provided.

The bill authorizes the OFR to issue and serve a cease and desist order if the OFR has reason to believe the person violates or has violated or is about to violate this chapter, any commission or OFR rule or order, or any written agreement entered into with the OFR.

In addition, the bill authorizes the OFR to issue an emergency cease and desist order if the OFR finds any violations of ch. 517, F.S., or any rule, order or written agreement by the OFR or commission presents an immediate danger to the public. Such emergency cease and desist may be issued by an immediate final order. The cease and desist order must recite with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named in the order and remains effective for 90 days after issuance.

If the OFR begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57, F.S.

The bill authorizes the OFR to permanently, or for a specific period of time, bar any person found to have violated ch. 517, F.S.

The bill provides the act does not limit the authority of the OFR to bring an administrative action against any person that is the subject of a civil action brought pursuant to the act or limit the authority of the OFR to engage in investigations or enforcement actions with the Attorney General. However, a person may not be subject to both a civil penalty described above and an administrative fine under subsection (3) as a result of the same facts. An enforcement action must be brought within six years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than eight years after the date such violation occurred.

Furthermore, the bill does not limit any statutory right of the state to punish a person for violation of a law. When not in conflict with the Constitution or law of the United States, the bill provides that Florida courts have the same jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as the courts of Florida may have with regard to similar cases instituted under Florida laws.

Private Remedies Available in Case of Unlawful Sale

Section 15 amends s. 517.211, F.S., relating to private remedies available in case of unlawful sale. Subsection (3) allows a purchaser to hold any control person who controls any person found to have violated ss. 517.07 or 517.12(1), (3), (4), (8), (10), (12), (15), or (17), F.S., jointly and severally liable with, and to the same extent as, such controlled person in any action brought in action for rescission unless the control person acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

Subsection (4) clarifies that interest accrues from the date the security is purchased.

Subsection (8) is created to incorporate the applicable portions of current ss. 517.241(2), and 517.241(3) F.S., as new subsection (8) and (9), respectively, and without substantive change. Technical, conforming changes are also make to the section.

Section 16 repeals s. 517.221, F.S., relating to cease and desist orders, and transfers these provisions into s. 517.191, F.S. relating to enforcement authority of the OFR.

Section 17 repeals s. 517.241, F.S., relating to remedies, and its applicable provisions are transferred to ss. 517.191, F.S., and 517.211, F.S., respectively.

Anti-Fraud Provisions (Sections 18-20)

Sections 517.301, 517.311, and 517.312, F.S., contain the provisions creating liabilities under ch. 517, F.S., for material misrepresentation or omissions.

Section 18 amends s. 517.301, F.S., relating to fraudulent transactions; falsification or concealment of facts. The section provides the following changes:

- Subsection (1)(a) is amended to include transactions exempted under ss. 517.0611 and 517.0612, F.S., directly or indirectly;
- Subsection (1)(a)3.(b) is amended to clarify an offer to sell securities can be published, given publicity, or circulated through the use of any means;

- Subsection (2)(b) is amended to include electronic mail, text messages, social media, or other electronic means to the list of tangible personal property;
- Subsection (3) is created to incorporate current s. 517.311(1), F.S. The section is amended to include transactions exempted under ss. 517.051, 517.061, 517.0611 and 517.0612, F.S., and to replace the term "company" with "business entity" for consistency;
- Subsection (4) is created to incorporate current s. 517.311(2), F.S. The section is amended to include persons within the purview of ss. 517.051, 519.061, 517.0611, 517.0612, and 517.081, F.S. and to remove gender specific pronouns;
- Subsection (5) is created to incorporate current s. 517.311(3), F.S.;
- Subsection (6) is created to incorporate current s. 517.311(4), F.S; and
- Subsection (7) is created to incorporate current s. 517.312(1), F.S.

Section 19 repeals s. 517.311, F.S., relating to false representations, deceptive words, and enforcement; and transfers provisions to s. 517.191, F.S., relating to enforcement.

Sections 20 repeals s. 517.312, F.S., relating to securities, investments, boiler rooms; prohibited practices; and remedies. Provisions are transferred to s. 517.301, F.S., relating to fraudulent transactions and falsification or concealment of facts.

Technical, Conforming Changes

Section 21. amends s. 517.072, F.S., to revise cross references.

Section 22 amends s. 517.12, F.S., to revise cross references.

Section 23 amends s. 517.1201, F.S., to revise cross reference.

Section 24 amends s. 517.1202, F.S., to revise cross reference.

Section 25 amends s. 517.302, F.S., to revise cross reference.

Effective Date

Section 26 provides an effective date of October 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The implementation of the pre-offering "test the waters" provision may reduce costs of conducting an exempt offering by providing businesses the flexibility to determine the optimal avenue for raising capital before spending thousands of dollars on legal and administrative fees.

In the event an enforcement action is required, the bill increases the civil penalty that may be imposed upon a natural person from $10,000 to $20,000. The bill also provides twice the amount of the civil penalty may be imposed in the event a specified adult, as defined in s. 517.34(1), F.S., is a victim of a violation of this chapter. Further, the Office of Financial Regulation (OFR) may recover any costs and attorney fees related to its investigation or enforcement.

Applicants may incur additional expenses for any fingerprint or state or federal background check required under the bill. The cost for a state and national criminal history record check is $37.25 per name. In addition, the Florida Department of Law Enforcement (FDLE) reports Livescan Services may assess additional processing fees,[47] which may require an applicant to pay additional fees.[48]

C. Government Sector Impact:

The bill has an indeterminate cost to state revenues and expenditures.

The bill requires issuers conducting an offering under the accredited investor exemption to file a notice of transaction, a consent to service of process, and a copy of the general announcement with the OFR. Further, the bill requires issuers conducting an offering under the Florida Invest Local Exemption to file a notice of the offering and a copy of the disclosure document with the OFR.

[47] The Florida Department of Law Enforcement, *Senate Bill Analysis 532* (Jan. 22, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).
[48] *Id.*

The OFR will need to review these documents. The bill does not provide an appropriation for additional staff to conduct such reviews. However, the OFR has indicated the need for additional staff to address the review of these documents is not currently anticipated.[49]

In the event an enforcement action is required, the bill increases the civil penalty imposable upon a natural person from $10,000 to $20,000. The bill also provides twice the amount of the civil penalty may be imposed in the event a specified adult, as defined in s. 517.34(1), F.S., is a victim of a violation of this chapter. The OFR may recover any costs and attorney fees related to its investigation or enforcement. Any moneys recovered by the OFR must be deposited into the Anti-Fraud Trust Fund.

The bill may have a positive impact to the FDLE's Operating Trust Fund as the cost for a state and national criminal history record check is $37.25 per name submitted. The Federal Bureau of Investigation (FBI) receives $13.25 and, pursuant to s. 943.053(3)(e), F.S., the FDLE retains $24.[50]

VI. Technical Deficiencies:

None.

VII. Related Issues:

If it is the intent of the bill to require applicants to undergo finger-print based, state and national criminal history record checks (Level 2), during the application process, the FDLE recommends stating so specifically within each applicable section of the bill. To facilitate state and national criminal history record checks, the following language should be included to ensure compliance with federal law and the United States Department of Justice (DOJ)-established criteria for the submission of fingerprints to the FBI's Criminal Justice Information Services (CJIS) Division for a national criminal history background check.[51]

> An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.
>
> Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).[52]

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[49] Email from Ash Mason, Legislative Affairs Director, Office of Financial Regulation, to Michelle Sanders, Legislative Analyst, Senate Appropriations Committee on Agriculture, Environment and General Government (Jan. 30, 2024) (on file with Senate Appropriations Committee on Agriculture, Environment and General Government).
[50] *Supra* at 45.
[51] The Florida Department of Law Enforcement, *Senate Bill Analysis 532* (Jan. 22, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).
[52] *Id.*

If the intent of the bill is to continue to require applicants to undergo Level 2 background checks, the FDLE recommends certain language be updated within the bill, in accordance with guidance from the FBI's Criminal Justice Information Law Unit (CJILU), as continued access to national criminal history record information is reliant upon the FBI's approval of the legislative changes.

In order to properly facilitate Level 2 background checks, the FDLE suggest amending chs. 517 and 626, F.S., where applicable, to include the following recommended fingerprint submission language:

> An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall initially submit the fingerprints to the Department of Law Enforcement for state processing, and thereafter the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.[53]

The following fee language, if and where applicable, should also be added at the end of the above recommended paragraph:

> Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).

The FDLE suggests clarifying the population meant within the following categories, as specifically as possible to ensure compliance with the criteria set forth in Public Law 92-544:

- "Any persons directly or indirectly controlling the applicant [or registrant]" should be redefined or removed;
- The phrase "includes, unless otherwise specified, a person" should be further defined or removed; and
- Terms, which may be interpreted as overly broad and undefined by the FBI to include: "agent"; "principal"; "partner"; "any officer"; "officer"; "direct owners"; "indirect owners; director"; "manager"; "managing member"; "branch manager"; "similar"; "directly or indirectly"; "including but not limited to"; and "otherwise". These terms should be defined, as applicable, throughout Chapter 517 and Chapter 626, F.S., relating to license or appointment types which require Level 2 background checks.[54]

The FDLE, following guidance from the FBI's CJILU, recommends the following terms within the definition of "intermediary", as defined in s. 517.021(13), F.S., need to be defined: "corporation", "trust", "partnership", "association", and "other legal entity".[55]

[53] *Id.*
[54] *Id.*
[55] *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 517.021, 517.051, 517.061, 517.0611, 517.0612, 517.081, 517.101, 517.131, 517.141, 517.191, 517.211, 517.301, 517.072, 517.12, 517.1201, 517.1202, and 517.302.

This bill creates the following sections of the Florida Statutes: 517.0613, 517.0614, 517.0615, and 517.0616.

This bill repeals the following sections of the Florida Statutes: 517.221, 517.241, 517.311, and 517.312.

IX. Additional Information:

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

CS/CS by Fiscal Policy on February 15, 2024:
The CS provides the following changes:
- Clarifies that the antifraud enforcement provisions apply to all securities transactions.
- Limits the registration exemption of certain industrial revenue bonds to securities offered or guaranteed by publicly-traded companies.
- Clarifies that the enforcement provisions also apply to managers and managing members of limited liability companies.
- Clarifies the application standards in the Securities Guaranty Fund provisions for certain persons.
- Clarifies that "demonstration day" presentations by small companies to prospective investors under limited conditions do not violate anti-solicitation prohibitions.

CS by Banking and Insurance on January 16, 2024:
The CS provides the following changes:
- Makes the revisions to the Securities Guaranty Fund prospective to October 1, 2024.
- Clarifies the exemption for transactions conducted through alternative trading systems.
- Provides technical, conforming changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
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The Committee on Fiscal Policy (Brodeur) recommended the following:

Senate Amendment

Delete lines 349 - 1905
and insert:
following securities; however, such transactions are subject to s. 517.301:
(1) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality


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thereof.~~; provided that~~

(a) Except as provided in paragraph (b), no person shall directly or indirectly offer or sell securities, other than general obligation bonds, described under this subsection if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest:

1.~~(a)~~ With respect to an obligation issued by the issuer or successor of the issuer; or

2.~~(b)~~ With respect to an obligation guaranteed by the guarantor or successor of the guarantor,

except by an offering circular containing a full and fair disclosure as prescribed by rule of the commission.

(b) Paragraph (a) applies to a security that is an industrial or commercial development bond unless payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under s. 18(b)(1) of the Securities Act of 1933, as amended.

(3) A security issued by and which represents or will represent an interest in or a direct obligation of, or be guaranteed by, any of the following:

(a) An international bank of which the United States is a member.

(b) A bank organized under the laws of the United States.

(c) A member bank of the Federal Reserve System.

(d) A depository institution, when a substantial portion of its business consists of or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance

Corporation or the National Credit Union Share Insurance Fund ~~or guaranteed by:~~

~~(a) A national bank, a federally chartered savings and loan association, or a federally chartered savings bank, or the initial subscription for equity securities in such national bank, federally chartered savings and loan association, or federally chartered savings bank;~~

~~(b) Any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916;~~

~~(c) An international bank of which the United States is a member; or~~

~~(d) A corporation created and acting as an instrumentality of the government of the United States~~.

(4) A security issued or guaranteed, as to principal, interest, or dividend, by a business entity ~~corporation~~ owning or operating a railroad, another common carrier, or any other public service utility; provided that such business entity ~~corporation~~ is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession of the United States, of any municipality located therein, of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation

or where the ownership or title of such equipment is pledged or retained in accordance with ~~the provisions of~~ the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; and also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

(8) Shares or other equity interests of a business entity which represent ownership or entitle the holders of such shares or other equity interests to possession and occupancy of specific apartment units in property owned by such business entity and organized and operated on a cooperative basis, solely for residential purposes ~~A note, draft, bill of exchange, or banker's acceptance having a unit amount of $25,000 or more which arises out of a current transaction, or the proceeds of which have been or are to be used for current transactions, and which has a maturity period at the time of issuance not exceeding 9 months exclusive of days of grace, or any renewal thereof which has a maturity period likewise limited. This subsection applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public; that is, paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks~~.

(9) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage

dividend issued by, a not-for-profit membership entity operated either as a cooperative under the cooperative laws of a state or in accordance with the cooperative provisions of subchapter T of chapter 1 of subtitle A of the United States Internal Revenue Code, as amended, but not a member's or owner's interest, retention certificate, or like security sold or transferred to a person other than:

(a) A bona fide member of the not-for-profit membership entity; or

(b) A person who becomes a bona fide member of the not-for-profit membership entity at the time of or in connection with the sale or transfer.

(10) ~~(9)~~ A security issued by a business entity ~~corporation~~ organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which ~~corporation~~ inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940, as amended; provided that a ~~no~~ person may not ~~shall~~ directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in

conformance with United States generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, does ~~shall~~ not preempt any provision of this chapter.

(11) ~~(10)~~ Any insurance or endowment policy or annuity contract or optional annuity contract or self-insurance agreement issued by a business entity ~~corporation~~, insurance company, reciprocal insurer, or risk retention group subject to the supervision of the insurance regulator or bank regulator, or any agency or officer performing like functions, of any state or territory of the United States or the District of Columbia.

Section 3. Section 517.061, Florida Statutes, is amended to read:

(Substantial rewording of section. See
s. 517.061, F.S., for present text.)

517.061 Exempt transactions.—Except as otherwise provided in subsection (11), the exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office before being claimed. Any person who claims entitlement to an exemption under this section bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to s. 517.301:

(1)(a) Any judicial sale or any sale by an executor, an administrator, a guardian, or a conservator; any sale by a receiver or trustee in insolvency or bankruptcy; any sale by an assignee as defined in s. 727.103, with respect to an assignment as defined in that section; or any transaction incident to a

judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(b) Except for a security exchanged in a case brought under Title 11 of the United States Code, a security issued in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of such issuance and exchange are approved:

1. By a court, an official or agency of the United States, a banking or insurance commission of a state or territory of the United States, or another governmental authority expressly authorized by law to grant such approval.

2. After a hearing upon the fairness of such terms and conditions and at which all persons to whom issuance of securities in such exchange is proposed have the right to appear.

(2) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(3) A transaction involving a stock dividend or equivalent equity distribution, regardless of whether the business entity distributing the dividend or equivalent equity distribution is the issuer, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend in the event that each stockholder or other equity holder may elect to take the dividend or equivalent

equity distribution in cash, property, or stock.

(4) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(5) The issuance of securities to such equity security holders or creditors of a business entity in the process of a reorganization of such business entity, made in good faith and not for the purpose of evading this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or the issuer’s parent or subsidiary, and the other person, or the person’s parent or subsidiary, are parties.

(7) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(21).

(8) The offer or sale of securities under a bona fide employee stock purchase, savings, option, profit-sharing, pension, or similar employee benefit plan, including any securities, plan interests, and guarantees issued under a

compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of the issuer's employees, directors, managers, managing members, general partners, trustees, officers, consultants, or advisors, and their family members who acquire such securities from such persons through gifts or domestic relations orders. This includes offers or sales of such securities to all of the following persons:

(a) Former employees, directors, managers, managing members, general partners, trustees, officers, consultants, or advisors, provided that the securities are issued to such persons in connection with their prior employment by or services provided to the issuer.

(b) Insurance agents who are exclusive insurance agents of the issuer, or of the issuer's parents or subsidiaries, or who derive more than 50 percent of their annual income from such persons.

(9) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity.

(10)(a) The offer or sale, by or on behalf of an issuer, of its own securities if the offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers,

of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information, which must include written notification of a purchaser's right to void the sale under subparagraph 4.

4. Any sale made pursuant to this subsection is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure document provided to the purchaser or purchaser's representative or by hand delivery, courier service, or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any spouse or child of the purchaser or any related family member who has the same principal residence as such purchaser.

2. A trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any business entity specified in subparagraph 3., collectively, have more than 50 percent of the beneficial interest, excluding any contingent interest.

3. A business entity in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2., collectively, are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. An accredited investor.

A business entity must be counted as one purchaser. However, if the business entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor, each beneficial owner of equity securities or equity interests in the business entity must be counted as a separate purchaser. A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 must be counted as one purchaser if the trustee makes all investment decisions for the plan.

(11) Offers or sales of securities by an issuer in a transaction that meets all of the following conditions:

(a) The offers or sales of securities are made only to persons who are, or who the issuer reasonably believes are, accredited investors.

(b) The issuer is not a business entity that has an undefined business operation, lacks a business plan, lacks a stated investment goal for the funds being raised, or plans to

engage in a merger or acquisition with an unspecified business entity.

(c) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months after sale is presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under this chapter or pursuant to an exemption available under this chapter, the Securities Act of 1933, as amended, or the rules and regulations adopted thereunder.

(d)1. A general announcement of the proposed offering, made by any means, includes only the following information:

a. The name, address, and telephone number of the issuer of the securities.

b. The name, a brief description, and price, if known, of any security to be issued.

c. A brief description of the business.

d. The type, number, and aggregate amount of securities being offered.

e. The name, address, and telephone number of the person to contact for additional information.

f. A statement that:

(I) Sales will be made only to accredited investors;

(II) Money or other consideration is not being solicited and will not be accepted by way of this general announcement; and

(III) The securities have not been registered with or


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approved by any state securities agency or the Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

2. The issuer may, in connection with an offer, provide information in addition to the information provided in the general announcement as specified in subparagraph 1. if such information is delivered:

a. Through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

b. After the issuer reasonably believes that the prospective purchaser is an accredited investor.

(e) The issuer does not use telephone solicitation unless, before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(f) The issuer files with the office a notice of transaction, a consent to service of process, and a copy of the general announcement within 15 days after the first sale is made in this state. The commission may adopt by rule procedures for filing documents by electronic means.

(g) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption under this subsection.

(12) The isolated sale or offer for sale of securities when made by or on behalf of a bona fide owner, not the issuer or underwriter, of the securities, who disposes of such securities for the owner’s own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any

scheme or enterprise with the intent of violating or evading this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a bona fide owner, rather than the issuer or underwriter, of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the conditions specified in paragraphs (10)(a) and (b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(a)(1) of the Securities Act of 1933, as amended, or under Securities and Exchange Commission rules or regulations.

(13) By or for the account of a pledgeholder, a secured party as defined in s. 679.1021(1)(ttt), or a mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(14) An unsolicited purchase or sale of securities on order of, and as the agent for, another solely and exclusively by a dealer registered pursuant to s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities at the direction of, and as agent for, another by any person other than a dealer so registered; and provided further that such purchase or sale may not be directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading this chapter.


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(15) A nonissuer transaction with a federal covered adviser with investments under management in excess of $100 million acting in the exercise of discretionary authority in a signed record for the account of others.

(16) The sale by or through a registered dealer of any securities option if, at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

(b)1. Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by commission rule;

2. The option is not sold by or for the benefit of the issuer of the underlying security; and

3. The underlying security may be purchased or sold on a recognized securities exchange registered under the Securities Exchange Act of 1934, as amended.

(17)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided that such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended; or

4. Securities, other than any security that is a federal covered security and is not subject to any registration or filing requirements under this chapter, that have been listed or approved for listing upon notice of issuance by a securities exchange registered under the Securities Exchange Act of 1934, as amended; and all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by an issuer with a class of securities listed or approved for listing upon notice of issuance by such securities exchange, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided in this subparagraph does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or a control person of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) The exemption provided in this subsection is not available for any securities that have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as

the office finds proper.

(18) Any nonissuer transaction by a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, as amended, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided that, at the time of the transaction, the following conditions in paragraphs (a), (b), and (c) and either paragraph (d) or paragraph (e) are met:

(a) The issuer of the security is actually engaged in business and is not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(b) The security is sold at a price reasonably related to the current market price of the security.

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the dealer as an underwriter of the security.

(d) The security is listed in a nationally recognized securities manual designated by rule of the commission or a document filed with and publicly viewable through the Securities and Exchange Commission electronic data gathering and retrieval system and contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer’s officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the

issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement.

(e)1. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, as amended;

2. The class of security is quoted, offered, purchased, or sold through an alternative trading system registered under Securities and Exchange Commission Regulation ATS, 17 C.F.R. s. 242.301, as amended, and the issuer of the security has made current information publicly available in accordance with Securities and Exchange Commission Rule 15c2-11, 17 C.F.R. s. 240.15c2-11, as amended;

3. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, as amended;

4. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

5. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within


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18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(19) The offer or sale of any security effected by or through a person in compliance with s. 517.12(16).

(20) A nonissuer transaction in an outstanding security by or through a dealer registered or exempt from registration under this chapter, if all of the following are true:

(a) The issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by commission rule, and the issuer has been subject to continuous reporting requirements in such foreign jurisdiction for not less than 180 days before the transaction.

(b) The security is listed on the securities exchange designated by this subsection or by commission rule, is a security of the same issuer which is of senior or substantially equal rank to the listed security, or is a warrant or right to purchase or subscribe to any such security.

For purposes of this subsection, Canada, together with its provinces and territories, is designated as a foreign jurisdiction, and The Toronto Stock Exchange, Inc., is designated as a securities exchange. If, after an administrative hearing in compliance with ss. 120.569 and 120.57, the office finds that revocation is necessary or appropriate in furtherance of the public interest and for the protection of investors, it may revoke the designation of a securities exchange under this subsection.


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(21) Other transactions exempted by commission rule upon a finding by the office that the application of s. 517.07 to a particular transaction is not necessary or appropriate in furtherance of the public interest and for the protection of investors due to the small dollar amount of the securities involved or the limited character of the offering. In conjunction with its adoption by rule of such exemptions, the commission may exempt persons selling or offering for sale securities in such a transaction from the registration requirements of s. 517.12. A rule adopted by the commission under this subsection may not have the effect of narrowing or limiting any exemption specified in this section.

Section 4. Section 517.0611, Florida Statutes, is amended to read:

517.0611 The Florida Limited Offering Exemption ~~Intrastate crowdfunding~~.—

(1) This section may be cited as ~~the~~ "The Florida Limited Offering ~~Intrastate Crowdfunding~~ Exemption."

(2) The registration provisions of s. 517.07 do not apply to a securities transaction conducted in accordance with this section; however, such transaction is subject to s. 517.301 ~~Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s. 517.061~~.

(3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal


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exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, ~~and United States~~ Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, as amended, or Securities and Exchange Commission Rule 147A, 17. C.F.R. s. 230.147A, as amended ~~adopted pursuant to the Securities Act of 1933~~.

(4) An issuer ~~must~~:

(a) Must be a for-profit business entity that maintains ~~formed under the laws of the state, be registered with the Secretary of State, maintain~~ its principal place of business ~~in the state,~~ and derives ~~derive~~ its revenues primarily from operations in this ~~the~~ state.

(b) Must conduct transactions for an ~~the~~ offering of $2.5 million or more through a dealer registered with the office or an intermediary registered under s. 517.12 ~~s. 517.12(19)~~. For an offering of less than $2.5 million, the issuer may, but is not required to, use such a dealer or intermediary.

(c) May not be, ~~either~~ before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d), as amended.

(d) May not be a business entity that has ~~company with~~ an undefined business operation, ~~a company that~~ lacks a business plan, ~~a company that~~ lacks a stated investment goal for the funds being raised, or ~~a company that~~ plans to engage in a merger or acquisition with an unspecified business entity.

(e) May not be subject to a disqualification established by


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the commission ~~or office~~ or a disqualification described in s. 517.0616 or s. 517.1611 ~~or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933~~. Each director, officer, manager, managing member, or general partner, or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the equity interest ~~shares~~ of the issuer, is subject to this paragraph ~~requirement~~.

(f) Must deposit all funds received from investors in an account in ~~Execute an escrow agreement with~~ a federally insured financial institution authorized to do business in this ~~the~~ state and maintain all such funds in the account until the target offering amount has been reached or the offering has been terminated or has expired. If the target offering amount has not been reached within the period specified by the issuer in the disclosure statement provided to investors, or if the offering is terminated or expires, the issuer must refund invested funds to all investors within 10 business days after such occurrence ~~for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount~~.

(g) Must use all funds in accordance with the use of proceeds as disclosed to prospective investors ~~Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline~~.

(5) The issuer must file a notice of the offering with the

office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The filing fee must ~~shall~~ be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in s. 517.101. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information, including an e-mail address, of the issuer.

(d) Identify any predecessors, owners, officers, directors, general partners, managers, managing members, ~~and control persons~~ or any person occupying a similar status or performing a similar function of the issuer, including that person's title, ~~his or her~~ status as a partner, trustee, or sole proprietor or a similar role, and ~~his or her~~ ownership percentage.

(e) Identify the federally insured financial institution

into~~, authorized to do business in the state, in~~ which investor funds will be deposited~~, in accordance with the escrow agreement~~.

(f) ~~Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.~~

~~(g) Include documentation verifying that the issuer is organized under the laws of the state and authorized to do business in the state.~~

~~(h)~~ If applicable, include the intermediary's website address where the issuer's securities will be offered.

(g)~~(i)~~ State ~~Include~~ the target offering amount and the date, not to exceed 365 days, by which the target amount must be reached in order to avoid termination of the offering.

(6) The issuer must amend the notice form within 10 business ~~30~~ days after any material information contained in the notice becomes inaccurate ~~for any reason~~. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

(7) The issuer may engage in general advertising and general solicitation of the offering to prospective investors. Any oral or written statements in advertising or solicitation of the offering which contain a material misstatement, or which fail to disclose material information, are subject to enforcement under this chapter. Any general advertising or other general announcement must state that the offering is limited and

open only to residents of this state.

(8) The issuer must provide a disclosure statement to ~~investors and the dealer or intermediary, along with a copy to the office at the time that the notice is filed, and make available to potential investors through~~ the dealer or intermediary, as applicable; to the office at the time that the notice is filed; and to each prospective investor at least 3 days before the investor's commitment to purchase or payment of any consideration. The~~, a~~ disclosure statement must contain ~~containing~~ material information about the issuer and the offering, including all of the following:

(a) The name, legal status, physical address, e-mail address, and website address of the issuer.

(b) The names of the directors, officers, managers, managing members, and general partners and any person occupying a similar status or performing a similar function, and the name and ownership percentage of each person holding more than 20 percent of the issuer's equity interests ~~shares of the issuer~~.

(c) A description of the current business ~~of the issuer~~ and ~~the~~ anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount and~~,~~ the deadline to reach the target offering amount~~, and regular updates regarding the progress of the issuer in meeting the target offering amount~~.

(f) The price to the public of the securities ~~or the method for determining the price. However, before the sale, each investor must receive in writing the final price and all required disclosures and have an opportunity to rescind the~~


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~~commitment to purchase the securities~~.

(g) A description of the ownership and capital structure of the issuer, including:

1. Terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer.

2. A description of how the exercise of the rights held by the principal equity holders ~~shareholders~~ of the issuer could negatively impact the purchasers of the securities being offered.

~~3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer.~~

~~4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions.~~

~~5. The risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.~~

(h) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in Securities and Exchange Commission Rule 147 or Rule 147A.


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(i) Any issuer plans, formal or informal, to offer additional securities in the future.

(j) The risks to purchasers of the securities relating to minority ownership in the issuer.

(k) ~~(h)~~ A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of $500,000 ~~$100,000~~ or less, the financial statements of the issuer may be, but are not required to be, included ~~description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects~~.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of more than $500,000 ~~$100,000~~, but not more than $2.5 million ~~$500,000~~, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures ~~for such review~~ or standards and procedures established by commission ~~the office, by~~ rule~~,~~ for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of more than $2.5 million ~~$500,000~~, the description must include audited financial statements


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prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(l) ~~(i)~~ The following statement in boldface, conspicuous type on the front page of the disclosure statement:

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this disclosure statement is truthful or complete. Any representation to the contrary is a criminal offense.

These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. ~~Consequently,~~ Neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

~~(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.~~

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $5 ~~$1~~ million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding equity interests ~~shares~~ of any class or classes of securities or to an officer, director, manager, managing member, general partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor, or the issuer reasonably believes that the investor is an accredited investor ~~as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933~~, the aggregate amount of securities sold by an issuer to an investor ~~in transactions exempt from registration requirements under this subsection~~ in a

12-month period may not exceed $10,000~~÷~~

~~(a) The greater of $2,000 or 5 percent of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000.~~

~~(b) Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or exceeds $100,000~~.

~~(11) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days after the end of its fiscal year, until no securities under this offering are outstanding. The annual reports must meet the following requirements:~~

~~(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other compensation received.~~

~~(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.~~

(11)~~(12)(a)~~ A notice-filing under this section must ~~shall~~ be summarily suspended by the office if:

(a) The payment for the filing is dishonored by the

financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn; or.

(b) ~~A notice-filing under this section shall be summarily suspended by the office if~~ The issuer made a material false statement in the issuer's notice-filing. The summary suspension remains ~~shall remain~~ in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office must ~~shall~~ enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.191(9) ~~s. 517.221(3)~~, and issue permanent bars under s. 517.191(10) ~~s. 517.221(4)~~ to the issuer and all owners, officers, directors, managers, managing members, general partners, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title; status as a partner, trustee, sole proprietor, or similar role; and ownership percentage.

(12) ~~(13)~~ If the issuer employs the services of an intermediary, the ~~An~~ intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to the ~~transactions, including verifying that the issuer is in compliance with the~~


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~~requirements of this section and, if necessary, denying an issuer access to its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential~~ offering.

(b) Provide ~~basic~~ information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The ~~basic~~ information must include, but need not be limited to, all of the following:

1. A description of the financial institution into which investor funds will be deposited ~~escrow agreement that the issuer has executed~~ and the conditions for the use ~~release~~ of such funds by ~~to~~ the issuer ~~in accordance with the agreement and subsection (4)~~.

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain from each prospective investor a zip code or residence address, a copy of a driver license, and any other proof of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of this state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor.

(d) Obtain information sufficient for the issuer or intermediary to reasonably believe that a particular prospective investor is an accredited investor

~~(c) Obtain a zip code or residence address from each~~

~~potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of the state.~~

~~(d) Obtain and verify a valid Florida driver license number or Florida identification card number from each investor before purchase of a security to confirm that the investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the investor.~~

~~(e) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).~~

~~(f) Direct the release of investor funds in escrow in accordance with subsection (4).~~

~~(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold the funds for the benefit of the investor~~.

(e) ~~(h)~~ Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest, in the previous calendar month.

~~(i) Require each investor to certify in writing, including as part of such certification his or her signature and his or her initials next to each paragraph of the certification, as follows:~~

~~I understand and acknowledge that:~~

~~I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.~~

~~This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.~~

~~The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.~~

~~I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.~~

~~By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.~~

~~If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.~~

~~(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers,~~

~~and an understanding of the risk of illiquidity.~~

(f)~~(k)~~ Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(g)~~(l)~~ Prohibit its directors, ~~and~~ officers, managers, managing members, general partners, employees, and agents from having any financial interest in the issuer using its services.

~~(m) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with the anti-money laundering requirements of 31 C.F.R. chapter X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 relating to brokers.~~

(13)~~(14)~~ An intermediary not registered as a dealer under s. 517.12(5) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any prospective ~~potential~~ investor.

(f) Engage in any other activities set forth by commission


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rule.

(14) If the issuer does not employ a dealer or an intermediary for an offering pursuant to the exemption created under this section, the issuer must fulfill each of the obligations specified in paragraphs (12)(c)-(f).

(15) Any sale made pursuant to the exemption created under this section is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure statement that is provided to the purchaser or purchaser's representative or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in the disclosure statement ~~All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor~~.

Section 5. Section 517.0612, Florida Statutes, is created to read:

517.0612 Florida Invest Local Exemption.—

(1) This section may be cited as the "Florida Invest Local Exemption."

(2) The registration provisions of s. 517.07 do not apply to a securities transaction conducted in accordance with this section; however, such transaction is subject to s. 517.301.


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(3) The offer or sale of securities under this section must meet the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, Securities and Exchange Commission Rule 147, or Securities and Exchange Commission Rule 147A, as amended.

(4) The issuer must be a for-profit business entity registered with the Department of State which has its principal place of business in this state. The issuer may not be, before or as a result of the offering:

(a) An investment company as defined in the Investment Company Act of 1940, as amended;

(b) Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;

(c) A business entity that has an undefined business operation, lacks a business plan, lacks a stated investment goal for the funds being raised, or plans to engage in a merger or an acquisition with an unspecified business entity; or

(d) Subject to a disqualification as provided in s. 517.0616.

(5) The sum of all cash and other consideration received from all sales of the securities in reliance upon the exemption under this section may not exceed $500,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption.

(6)(a) The issuer may not accept more than $10,000 from any single purchaser unless any of the following apply:

1. The issuer reasonably believes that the purchaser is an accredited investor.


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2. The purchaser is an officer, director, partner, or trustee, or an individual occupying a similar status or performing similar functions, of the issuer.

3. The purchaser is an owner of 10 percent or more of the issuer's outstanding equity.

(b) For purposes of this subsection, the following persons must be treated collectively as a single purchaser:

1. Any spouse or child of the purchaser or any related family member who has the same primary residence as the purchaser.

2. Any business entity of which the purchaser and any person related to the purchaser as provided in subparagraph 1. collectively own more than 50 percent of the equity interest.

(7) The issuer may engage in general advertising and general solicitation of the offering. Any general advertising or other general announcement must state that the offer is limited and open only to residents of this state. Any oral or written statements in advertising or solicitation of the offer which contain a material misstatement, or which fail to disclose material information, are subject to enforcement under this chapter.

(8) A purchaser must receive, at least 3 business days before any binding commitment to purchase or consideration paid, a disclosure statement that provides material information regarding the issuer, including, but not limited to, all of the following information:

(a) The issuer's name, type of entity, and contact information.

(b) The name and contact information of each director,

officer, or other manager of the issuer.

(c) A description of the issuer's business.

(d) A description of the security being offered.

(e) The total amount of the offering.

(f) The intended use of proceeds from the sale of the securities.

(g) The target offering amount.

(h) A statement that if the target offering amount is not obtained in cash or in the value of other tangible consideration received on a date that is no more than 180 days after the commencement of the offering, the offering will be terminated, and any funds or other consideration received from purchasers must be promptly returned.

(i) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in Securities and Exchange Commission Rule 147 or Rule 147A.

(j) The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the issuer.

(k) The name of the bank or other depository institution into which investor funds will be deposited.

(l) The following statement in boldface, conspicuous type:

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined that this disclosure statement is truthful or complete. Any representation to the contrary is a criminal offense.

(9) All funds received from investors must be deposited into a bank or depository institution authorized to do business in this state. The issuer may not withdraw any amount of the offering proceeds unless the target offering amount has been received.

(10) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, no less than 5 business days before the offering commences, along with the disclosure statement described in subsection (8). If there are any material changes to the information previously submitted, the issuer must, within 3 business days after such material change, file an amended notice.

(11) An individual, entity, or entity employee who acts as an agent for the issuer in the offer or sale of securities and is not registered as a dealer under this chapter may not do either of the following:

(a) Receive compensation based upon the solicitation of purchases, sales, or offers to purchase the securities.

(b) Take custody of investor funds or securities.

(12) Any sale made pursuant to the exemption created under this section is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser’s notice to the issuer must be sent by e-mail to the issuer’s e-mail address set forth in the disclosure statement that is provided to a purchaser or the purchaser’s representative or by hand delivery, courier service,


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or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

Section 6. Section 517.0613, Florida Statutes, is created to read:

517.0613 Failure to comply with a securities registration exemption.—

(1) Failure to meet the requirements for any exemption from securities registration does not preclude the issuer from claiming the availability of any other applicable state or federal exemption.

(2) The exemptions created under ss. 517.061, 517.0611, and 517.0612 are not available to an issuer for any transaction or series of transactions that, although in technical compliance with the applicable provisions, is part of a plan or scheme to evade the registration provisions of s. 517.07, and registration under s. 517.07 is required in connection with such transactions.

Section 7. Section 517.0614, Florida Statutes, is created to read:

517.0614 Integration of offerings.—

(1) If the safe harbors in subsection (2) do not apply in determining whether two or more offerings are to be treated as one for the purpose of registration or qualifying for an exemption from registration under this chapter, offers and sales may not be integrated if, based on the particular facts and circumstances, the issuer can establish either that each offering complies with the registration requirements of this chapter, or that an exemption from registration is available for

the particular offering, provided that any transaction or series of transactions that, although in technical compliance with this chapter, is part of a plan or scheme to evade the registration requirements of this chapter will not have the effect of avoiding integration. In making this determination:

(a) For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer or any person acting on the issuer's behalf:

1. Did not solicit such purchaser through the use of general solicitation; or

2. Established a substantive relationship with such purchaser before the commencement of the exempt offering prohibiting general solicitation, provided that a purchaser previously solicited through the use of general solicitation is not deemed to have been solicited through the use of general solicitation in the current offering if, during the 45 calendar days following such previous general solicitation:

a. No offer or sale of the same or similar class of securities has been made by or on behalf of the issuer, including to such purchaser; and

b. The issuer or any person acting on the issuer's behalf has not solicited such purchaser through the use of general solicitation for any other security.

(b) For two or more concurrent exempt offerings permitting general solicitation, in addition to satisfying the requirements of the particular exemption relied on, general solicitation offering materials for one offering that includes information

about the material terms of a concurrent offering under another exemption may constitute an offer of securities in such other offering, and therefore the offer must comply with all the requirements for, and restrictions on, offers under the exemption being relied on for such other offering, including any legend requirements and communications restrictions.

(2) The integration analysis required by subsection (1) is not required if any of the following nonexclusive safe harbors apply:

(a) An offering commenced more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, may not be integrated with such other offering, provided that for an exempt offering for which general solicitation is not permitted which follows by 30 calendar days or more an offering that allows general solicitation, paragraph (1)(a) applies.

(b) Offers and sales made in compliance with any of the following provisions are not subject to integration with other offerings:

1. Section 517.051 or s. 517.061, except s. 517.061(9), (10), or (11).

2. Section 517.0611 or s. 517.0612.

Section 8. Section 517.0615, Florida Statutes, is created to read:

517.0615 Solicitations of interest.—

(1) A communication will not be deemed to constitute general solicitation or general advertising if the communication is made in connection with a seminar or meeting in which more than one issuer participates and which is sponsored by a

college, a university, or another institution of higher education; a state or local government or an instrumentality thereof; a nonprofit chamber of commerce or other nonprofit organization; or an angel investor group, incubator, or accelerator, if all of the following apply:

(a) Advertising for the seminar or meeting does not reference a specific offering of securities by the issuer.

(b) The sponsor of the seminar or meeting does not do any of the following:

1. Make investment recommendations or provide investment advice to attendees of the seminar or meeting.

2. Engage in any investment negotiations between the issuer and investors attending the seminar or meeting.

3. Charge attendees of the seminar or meeting any fees, other than reasonable administrative fees.

4. Receive any compensation for making introductions between seminar or meeting attendees and issuers or for investment negotiations between such parties.

5. Receive any compensation with respect to the seminar or meeting, which compensation would require registration or notice-filing under this chapter, the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., as amended, or the Investment Advisers Act of 1940, 15 U.S.C. ss. 80b-1 et seq., as amended. The sponsorship or participation in the seminar or meeting does not by itself require registration or notice-filing under this chapter.

(c) The type of information regarding an offering of securities by the issuer which is communicated or distributed by or on behalf of the issuer in connection with the seminar or


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meeting is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, the intended use of proceeds of the offering, and the unsubscribed amount in an offering.

(d) If the event allows attendees to participate virtually, rather than in person, online participation in the event is limited to:

1. Individuals that are members of, or otherwise associated with, the sponsor organization;

2. Individuals that the sponsor reasonably believes are accredited investors; or

3. Individuals that have been invited to the event by the sponsor based on industry or investment-related experience reasonably selected by the sponsor in good faith and disclosed in the public communications about the event.

(2) Before any offers or sales are made in connection with an offering, communications by an issuer or any person authorized to act on behalf of the issuer are not deemed to constitute general solicitation or general advertising if the communication is solely for the purpose of determining whether there is any interest in a contemplated securities offering. Requirements imposed under this chapter on written or oral statements made in the course of such communication may be enforced as provided in this chapter. The solicitation or acceptance of money or other consideration or of any commitment, binding or otherwise, from any person is prohibited.

(a) The communication must state all of the following:

1. Money or other consideration is not being solicited and,


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if sent in response, will not be accepted.

2. Any offer to buy the securities will not be accepted, and no part of the purchase price will be accepted.

3. A person's indication of interest does not involve obligation or commitment of any kind.

(b) Any written communication under this subsection may include a means by which a person may indicate to the issuer that the person is interested in a potential offering. The issuer may require the name, address, telephone number, or e-mail address in any response form included in the written communication under this paragraph.

(c) A communication in accordance with this subsection is not subject to s. 501.059, regarding telephone solicitations.

Section 9. Section 517.0616, Florida Statutes, is created to read:

517.0616 Disqualification.—A registration exemption under s. 517.061(9), (10), and (11), s. 517.0611, or s. 517.0612 is not available to an issuer that would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d), as amended, at the time the issuer makes an offer for the sale of a security.

Section 10. Present subsections (4) through (8) of section 517.081, Florida Statutes, are redesignated as subsections (6) through (10), respectively, new subsections (4) and (5) are added to that section, and subsection (2), paragraph (g) of subsection (3), and present subsection (7) of that section are amended, to read:

517.081 Registration procedure.—

(2) The office shall receive and act upon applications for


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the registration of ~~to have~~ securities ~~registered, and the commission may prescribe forms on which it may require such applications to be submitted~~. Applications must ~~shall~~ be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the office. ~~The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section.~~ An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell such securities ~~the same~~ within the state.

(3) The office may require the applicant to submit to the office the following information concerning the issuer and such other relevant information as the office may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(g)~~1.~~ A specimen copy of the securities certificate, if applicable, and a copy of any circular, prospectus, advertisement, or other description of such securities.

~~2. The commission shall adopt a form for a simplified offering circular to register, under this section, securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:~~

~~a. An issuer seeking to register securities for resale by~~

~~persons other than the issuer.~~

~~b. An issuer that is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or equity owner who owns at least 10 percent of the ownership interests of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, partner, or manager or managing member of such selling agent.~~

~~c. An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.~~

~~d. An issuer of offerings in which the specific business or properties cannot be described.~~

~~e. Any issuer the office determines is ineligible because the form does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.~~

~~f. Any issuer that has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.~~

~~As a condition precedent to qualifying for use of the simplified offering circular, an issuer shall agree to provide the office~~


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~~with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.~~

(4) The commission may, by rule:

(a) Establish criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, oil and gas investments, and other investments. In establishing these criteria, the commission may consider the rules and regulations of the Securities and Exchange Commission and statements of policy by the North American Securities Administrators Association, Inc., relating to the registration of securities offerings. The criteria must include all of the following:

1. The promoter's equity investment ratio.

2. The financial condition of the issuer.

3. The voting rights of shareholders.

4. The grant of options or warrants to underwriters and others.

5. Loans and other transactions with affiliates of the issuer.

6. The use, escrow, or refund of proceeds of the offering.

(b) Prescribe forms requiring applications for the

registration of securities to be submitted to the office, including a simplified offering circular to register, under this section, securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(c) Establish procedures for depositing fees and filing documents by electronic means, provided that such procedures provide the office with the information and data required by this section.

(d) Establish requirements and standards for the filing, content, and circulation of a preliminary, final, or amended prospectus, advertisements, and other sales literature. In establishing such requirements and standards, the commission shall consider the rules and regulations of the Securities and Exchange Commission relating to requirements for preliminary, final, or amended or supplemented prospectuses and the rules of the Financial Industry Regulatory Authority relating to advertisements and sales literature.

(5) All of the following issuers are not eligible to submit a simplified offering circular:

(a) An issuer that is subject to any of the disqualifications described in Securities and Exchange Commission Rule 262, 17 C.F.R. s. 230.262, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this paragraph, an issuer includes an issuer’s director, officer, general partner, manager or managing member, trustee, or a person owning at least 10 percent of the

ownership interests of the issuer; a promoter or selling agent of the securities to be offered; or any officer, director, partner, or manager or managing member of such selling agent.

(b) An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified business entity or entities.

(c) An issuer of offerings in which the specific business or properties cannot be described.

(d) An issuer that the office determines is ineligible because the simplified circular does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

(9)(a) ~~(7)~~ The office shall record the registration of a security in the register of securities if, upon examination of an ~~any~~ application, it finds that all of the following requirements are met: ~~the office~~

1. The application is complete.

2. The fee imposed in subsection (8) has been paid.

3. The sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser.

4. The terms of the sale of such securities would be fair, just, and equitable.

5. The enterprise or business of the issuer is not based upon unsound business principles.

(b) Upon registration, the security may be sold by the issuer or any registered dealer, subject, however, to the further order of the office ~~shall find that the sale of the security referred to therein would not be fraudulent and would~~

~~not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the office. In order to determine if an offering is fair, just, and equitable, the commission may by rule establish requirements and standards for the filing, content, and circulation of any preliminary, final, or amended prospectus and other sales literature and may by rule establish merit qualification criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments, including, but not limited to, oil and gas investments. The criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering, and such other relevant criteria as the office in its judgment may deem necessary to such determination~~.

Section 11. Subsection (2) of section 517.101, Florida Statutes, is amended to read:

517.101 Consent to service.—

(2) Any such action must ~~shall~~ be brought either in the county of the plaintiff's residence or in the county in which the office has its official headquarters. The written consent


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must ~~shall~~ be authenticated by the seal of the ~~said~~ issuer, if it has a seal, and by the acknowledged signature of a director, manager, managing member, general partner, trustee, or officer of the issuer ~~member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association,~~ and must ~~shall in such case~~ be accompanied by a duly certified copy of the resolution of the issuer's board of directors, trustees, managers, managing members, or general partners ~~or managers of the corporation or association,~~ authorizing the signer to execute the consent ~~officers to execute the same~~. In case any process or pleadings mentioned in this chapter are served upon the office, service must ~~it shall~~ be by duplicate copies, one of which must ~~shall~~ be filed in the office and the other ~~another~~ immediately forwarded by the office by registered mail to the principal office of the issuer against which the ~~said~~ process or pleadings are directed.

Section 12. Section 517.131, Florida Statutes, is amended to read:

517.131 Securities Guaranty Fund.—

(1) As used in this section, the term "final judgment" includes an arbitration award confirmed by a court of competent jurisdiction.

(2)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and cannot recover the full


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amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for associated persons must ~~shall~~ be part of the regular registration license fee and must ~~shall~~ be transferred to or deposited in the Securities Guaranty Fund.

(b) If the balance in the Securities Guaranty Fund at any time exceeds $1.5 million, transfer of assessment fees to the ~~this~~ fund must ~~shall~~ be discontinued at the end of that registration ~~license~~ year, and transfer of such assessment fees may ~~shall~~ not resume ~~be resumed~~ unless the fund balance is reduced below $1 million by disbursement made in accordance with s. 517.141.

~~(2) The Securities Guaranty Fund shall be disbursed as provided in s. 517.141 to a person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, investment adviser, or associated person who was licensed under this chapter at the time the act was committed:~~

~~(a) A violation of s. 517.07.~~

~~(b) A violation of s. 517.301.~~

(3) A ~~Any~~ person is eligible for payment ~~to seek recovery~~ from the Securities Guaranty Fund if the person:

(a)1. Holds an unsatisfied final judgment entered on or after October 1, 2024, in which a wrongdoer was found to have violated s. 517.07 or s. 517.301;


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2. Has applied any amount recovered from the judgment debtor or any other source to the damages awarded by the court or arbitrator; and

3. Is a natural person who was a resident of this state, or is a business entity that was domiciled in this state, at the time of the violation of s. 517.07 or s. 517.301; or

(b) Is a receiver appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution under s. 517.191(3) as a result of a violation of s. 517.07 or s. 517.301 which has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (a)

If a person holds an unsatisfied final judgment entered before October 1, 2024, in which a wrongdoer was found to have violated s. 517.07 or s. 517.301, such person’s claim for payment from the Securities Guaranty Fund shall be governed by the terms of this section and s. 517.141 which were effective on the date of such final judgment

By the Committee on Banking and Insurance; and Senator Brodeur

597-02149-24 2024532c1

A bill to be entitled

An act relating to securities; amending s. 517.021, F.S.; revising definitions; defining the terms "angel investor group" and "business entity"; amending s. 517.051, F.S.; revising the list of securities that are exempt from registration requirements under certain provisions; amending s. 517.061, F.S.; revising the list of transactions that are exempt from registration requirements under certain provisions; amending s. 517.0611, F.S.; revising a short title; revising provisions relating to a certain registration exemption for certain securities transactions; updating the federal laws or regulations with which the offer or sale of securities must be in compliance; revising requirements for issuers relating to the registration exemption; revising requirements for the notice of offering that must be filed by the issuer under certain circumstances; specifying the timeframe within which issuers may amend such notice after any material information contained in the notice becomes inaccurate; authorizing the issuer to engage in general advertising and general solicitation under certain circumstances; specifying requirements for such advertising and solicitation; requiring the issuer to provide a disclosure statement to certain entities and persons within a specified timeframe; revising requirements for such statement; deleting requirements for the escrow agreement; conforming provisions to changes made by the act; revising the

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amount that may be received for sales of certain securities; providing a limit on securities that may be sold by an issuer to an investor; deleting the requirement that an issuer file and provide a certain annual report; conforming cross-references; revising the duties of intermediaries under certain circumstances; providing obligations of issuers under certain circumstances; providing that certain sales are voidable within a specified timeframe; providing requirements for purchasers' notices to issuers to void purchases; deleting provisions relating to funds received from investors; creating s. 517.0612, F.S.; providing a short title; providing applicability; requiring that offers and sales of securities be in accordance with certain federal laws and rules; specifying certain requirements for issuers relating to the registration exemption; specifying a limitation on the amount of cash and other consideration that may be received from sales of certain securities made within a specified timeframe; prohibiting an issuer from accepting more than a specified amount from a single purchaser under certain circumstances; authorizing the issuer to engage in general advertising and general solicitation of the offering under certain circumstances; specifying that a certain prohibition is enforceable under ch. 517, F.S.; requiring that the purchaser receive a disclosure statement within a specified timeframe; specifying the requirements for such statement; requiring certain

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

funds to be deposited into certain bank and depository institutions; prohibiting the issuer from withdrawing any amount of the offering proceeds until the target offering amount has been received; requiring the issuer to file a notice of the offering in a certain format within a specified timeframe; requiring the issuer to file an amended notice within a specified timeframe under certain circumstances; prohibiting agents of issuers from engaging in certain acts under certain circumstances; providing that sales made under the exemption are voidable within a specified timeframe; providing requirements for purchasers' notices to issuers to void purchases; creating s. 517.0613, F.S.; providing construction; providing that registration exemptions under certain provisions are not available to issuers for certain transactions under specified circumstances; providing registration requirements; creating s. 517.0614, F.S.; specifying criteria for determining integration of offerings for the purpose of registration or qualifying for a registration exemption; specifying certain requirements for the integration of offerings for an exempt offering for which general solicitation is prohibited; specifying certain requirements for the integration of offerings for two or more exempt offerings that allow general solicitation; specifying the circumstances under which integration analysis is not required; creating s. 517.0615, F.S.; specifying that certain communications are not deemed to

constitute general solicitation or general advertising under specified circumstances; creating s. 517.0616, F.S.; providing that registration exemptions under certain provisions are not available to certain issuers under a specified circumstance; amending s. 517.081, F.S.; revising the duties and authority of the Financial Services Commission; authorizing the commission to establish certain criteria relating to the issuance of certain securities, trusts, and investments; authorizing the commission to prescribe certain forms and establish procedures for depositing fees and filing documents and requirements and standards relating to prospectuses, advertisements, and other sales literature; revising the list of issuers that are ineligible to submit simplified offering circulars; deleting provisions that require issuers to provide certain documents to the Office of Financial Regulation under certain circumstances; revising the requirements that must be met before the office must record the registration of a security; amending s. 517.101, F.S.; revising requirements for written consent to service in certain suits, proceedings, and actions; amending s. 517.131, F.S.; defining the term "final judgment"; specifying the purpose of the Securities Guaranty Fund; making technical changes; revising eligibility for payment from the fund; requiring eligible persons or receivers seeking payment from the fund to file a certain application with the office on a certain form;

authorizing the commission to adopt rules regarding electronic filing of such application; specifying the timeframe within which certain eligible persons or receivers must file such application; providing requirements for such applications; requiring the office to approve applications for payment under certain circumstances and to provide applicants with certain notices within a specified timeframe; requiring eligible persons or receivers to assign to the office all rights, titles, and interests in final judgments and orders of restitution equal to a specified amount under certain circumstances; requiring the office to deem an application for payment abandoned under certain circumstances; requiring that the time period to complete applications be tolled under certain circumstances; deleting provisions relating to specified notices to the office and to rulemaking authority; amending s. 517.141, F.S.; defining terms; revising the Securities Guaranty Fund disbursement amounts to which eligible persons are entitled; revising provisions regarding payment of aggregate claims; providing for the satisfaction of claims in the event of an insufficient balance in the fund; requiring payments and disbursements from the Securities Guaranty Fund to be made by the Chief Financial Officer or his or her authorized designee, upon authorization by the office; requiring such authorization to be submitted within a certain timeframe; deleting provisions regarding

requirements for payment of claims; conforming provisions to changes made by the act; specifying the circumstances under which a claimant must reimburse the fund for payments received from the fund; providing penalties; authorizing the Department of Financial Services, rather than the office, to institute legal proceedings for certain compliance enforcement and to recover certain interests, costs, and fees; amending s. 517.191, F.S.; deleting an obsolete term; revising the civil penalty amounts for certain violations; authorizing the office to recover certain costs and attorney fees; requiring that moneys recovered be deposited in a specified trust fund; specifying the liability of control persons; providing an exception; specifying circumstances under which certain persons are deemed to have violated ch. 517, F.S.; authorizing the office to issue and serve cease and desist orders and emergency cease and desist orders under certain circumstances; authorizing the office to impose and collect administrative fines for certain violations; specifying the disposition of such fines; authorizing the office to bar applications or notifications for licenses and registrations under certain circumstances; conforming cross-references; providing construction; specifying jurisdiction of the courts relating to the sale or offer of certain securities; making technical changes; amending s. 517.211, F.S.; providing for joint and several liability of control persons in certain circumstances

for the purposes of specified actions; specifying the date on which certain interest begins accruing in an action for rescission; providing construction; specifying that certain civil remedies extend to purchasers or sellers of securities; making technical changes; repealing s. 517.221, F.S., relating to cease and desist orders; repealing s. 517.241, F.S., relating to remedies; amending s. 517.301, F.S.; revising the circumstances under which certain activities are considered unlawful and violations of law; conforming provisions to changes made by the act; revising the definition of the term "investment"; specifying that certain misrepresentations by persons issuing or selling securities are unlawful; specifying that certain misrepresentations by persons registered or required to be registered under certain provisions or subject to certain requirements are unlawful; specifying that obtaining money or property in connection with the offer or sale of an investment is unlawful under certain conditions; providing construction; requiring disclaimers for certain statements; making technical changes; repealing s. 517.311, F.S., relating to false representations, deceptive words, and enforcement; repealing s. 517.312, F.S., relating to securities, investments, and boiler rooms, prohibited practices, and remedies; amending ss. 517.072 and 517.12, F.S.; conforming cross-references and making technical changes; amending ss. 517.1201 and 517.1202, F.S.; conforming

cross-references; amending s. 517.302, F.S.; conforming a provision to changes made by the act and making a technical change; providing an effective date.

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

Section 1. Present subsections (3), (4), and (5) and subsections (6) through (25) of section 517.021, Florida Statutes, are redesignated as subsections (4), (5), and (6) and subsections (8) through (27), respectively, new subsections (3) and (7) are added to that section, and subsection (1) and present subsections (4), (8), (9), and (14) of that section are amended, to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(1) "Accredited investor" shall be defined by rule of the commission in accordance with Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501, as amended.

(3) "Angel investor group" means a group of accredited investors who hold regular meetings and have defined processes and procedures for making investment decisions, individually or among the membership of the group, and who are not associated persons, affiliates, or agents of a dealer or investment adviser.

(5) ~~(4)~~ "Boiler room" means an enterprise in which two or more persons in a common scheme or enterprise solicit potential investors through telephone calls, e-mail, text messages, social

media, chat rooms, or other electronic means ~~engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise~~.

(7) "Business entity" means any corporation, partnership, limited partnership, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, which may or may not be fictitiously named, doing business in this state.

(10)(a) ~~(8)~~ "Dealer" includes, unless otherwise specified, a person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(b) The term "dealer" does not include any of the following:

1. ~~(a)~~ A licensed practicing attorney who renders or performs any such services in connection with the regular practice of the attorney's profession.

2. ~~(b)~~ A bank authorized to do business in this state, except nonbank subsidiaries of a bank.

3. ~~(c)~~ A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.

4. ~~(d)~~ A wholesaler selling exclusively to dealers.

5. ~~(e)~~ A person buying and selling for the person's own account exclusively through a registered dealer or stock

exchange.

6. ~~(f)~~ An issuer.

7. ~~(g)~~ A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person:

a. ~~1.~~ Is an officer, a director, a limited liability company manager or managing member, or a bona fide employee of the issuer;

b. ~~2.~~ Has not participated in the distribution or sale of securities for any issuer for which such person was, within the preceding 12 months, an officer, a director, a limited liability company manager or managing member, or a bona fide employee;

c. ~~3.~~ Primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities; and

d. ~~4.~~ Does not receive a commission, compensation, or other consideration for the completed sale of the issuer's securities apart from the compensation received for regular duties to the issuer.

(11) ~~(9)~~ "Federal covered adviser" means a person that is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term does not include any person that is excluded from the definition of investment adviser under subparagraphs (16)(b)1.-7. and 9 ~~(14)(b)1.-8~~.

(16)(a) ~~(14)(a)~~ "Investment adviser" means a person, other than an associated person of an investment adviser or a federal covered adviser, that receives compensation, directly or

indirectly, and engages for all or part of the person's time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities.

(b) The term does not include any of the following:

1. A dealer or an associated person of a dealer whose performance of services in paragraph (a) is solely incidental to the conduct of the dealer's or associated person's business as a dealer and who does not receive special compensation for those services.

2. A licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's profession.

3. A bank authorized to do business in this state.

4. A bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state.

5. A trust company having trust powers, as defined in s. 658.12, which it is authorized to exercise in this state, which trust company renders or performs investment advisory services in a fiduciary capacity incidental to the exercise of its trust powers.

6. A person that renders investment advice exclusively to insurance or investment companies.

7. A person that, during the preceding 12 months, has fewer than six clients who are residents of this state. As used in this subparagraph, the term "client" has the same meaning as

provided in Securities and Exchange Commission Rule 275.222-2, 17 C.F.R. s. 275.222-2, as amended ~~does not hold itself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state~~.

8. ~~A person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940, as amended. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940, as amended.~~

~~9.~~ A federal covered adviser.

9. The United States, a state, or any political subdivision of a state, or any agency, authority, or instrumentality of any such entity; a business entity that is wholly owned directly or indirectly by such a governmental entity; or any officer, agent, or employee of any such governmental or business entity who is acting within the scope of his or her official duties.

Section 2. Present subsections (9) and (10) of section 517.051, Florida Statutes, are redesignated as subsections (10) and (11), respectively, and amended, a new subsection (9) is added to that section, and subsections (1), (3), (4), and (8) of that section are amended, to read:

517.051 Exempt securities.—The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the

following securities:

(1) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof.~~; provided that~~

(a) Except as provided in paragraph (b), a ~~no~~ person may not ~~shall~~ directly or indirectly offer or sell securities, other than general obligation bonds, described under this subsection if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest:

1.~~(a)~~ With respect to an obligation issued by the issuer or successor of the issuer; or

2.~~(b)~~ With respect to an obligation guaranteed by the guarantor or successor of the guarantor,

except by an offering circular containing a full and fair disclosure as prescribed by rule of the commission.

(b) Paragraph (a) does not apply to a security that is an industrial or commercial development bond unless payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under s. 18(b)(1) of the Securities Act of 1933, as amended.

(3) A security issued by and which represents or will represent an interest in or a direct obligation of or be guaranteed by any of the following:

(a) An international bank of which the United States is a member.

(b) A bank organized under the laws of the United States.

(c) A member bank of the Federal Reserve System.

(d) A depository institution, when a substantial portion of its business consists of or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund ~~or guaranteed by:~~

~~(a) A national bank, a federally chartered savings and loan association, or a federally chartered savings bank, or the initial subscription for equity securities in such national bank, federally chartered savings and loan association, or federally chartered savings bank;~~

~~(b) Any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916;~~

~~(c) An international bank of which the United States is a member; or~~

~~(d) A corporation created and acting as an instrumentality of the government of the United States~~.

(4) A security issued or guaranteed, as to principal, interest, or dividend, by a business entity ~~corporation~~ owning or operating a railroad, another common carrier, or any other public service utility; provided that such business entity ~~corporation~~ is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession of the United States, of any municipality located therein, of the District of Columbia, or of the Dominion

of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with ~~the provisions of~~ the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; and also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

(8) Shares or other equity interests of a business entity which represent ownership or entitle the holders of such shares or other equity interests to possession and occupancy of specific apartment units in property owned by such business entity and organized and operated on a cooperative basis, solely for residential purposes ~~A note, draft, bill of exchange, or banker's acceptance having a unit amount of $25,000 or more which arises out of a current transaction, or the proceeds of which have been or are to be used for current transactions, and which has a maturity period at the time of issuance not exceeding 9 months exclusive of days of grace, or any renewal thereof which has a maturity period likewise limited. This subsection applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public;~~

~~that is, paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks~~.

(9) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a not-for-profit membership entity operated either as a cooperative under the cooperative laws of a state or in accordance with the cooperative provisions of subchapter T of chapter 1 of subtitle A of the United States Internal Revenue Code, as amended, but not a member's or owner's interest, retention certificate, or like security sold or transferred to a person other than:

(a) A bona fide member of the not-for-profit membership entity; or

(b) A person who becomes a bona fide member of the not-for-profit membership entity at the time of or in connection with the sale or transfer.

(10) ~~(9)~~ A security issued by a business entity ~~corporation~~ organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which ~~corporation~~ inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940, as amended; provided that a ~~no~~ person may not ~~shall~~ directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission, of all material information, including, but

not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with United States generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, does ~~shall~~ not preempt any provision of this chapter.

(11)~~(10)~~ Any insurance or endowment policy or annuity contract or optional annuity contract or self-insurance agreement issued by a business entity ~~corporation~~, insurance company, reciprocal insurer, or risk retention group subject to the supervision of the insurance regulator or bank regulator, or any agency or officer performing like functions, of any state or territory of the United States or the District of Columbia.

Section 3. Section 517.061, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 517.061, F.S., for present text.)

517.061 Exempt transactions.—Except as otherwise provided in subsection (11), the exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office before being claimed. Any person who claims entitlement to an exemption under this section bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to s. 517.301:

(1)(a) Any judicial sale or any sale by an executor, an administrator, a guardian, or a conservator; any sale by a receiver or trustee in insolvency or bankruptcy; any sale by an assignee as defined in s. 727.103 with respect to an assignment as defined in that section; or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(b) Except for a security exchanged in a case brought under Title 11 of the United States Code, a security that is issued in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of such issuance and exchange are approved:

1. By a court, an official or agency of the United States, a banking or insurance commission of a state or territory of the United States, or another governmental authority expressly authorized by law to grant such approval.

2. After a hearing upon the fairness of such terms and conditions and at which all persons to whom issuance of securities in such exchange is proposed have the right to appear.

(2) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(3) A transaction involving a stock dividend or equivalent equity distribution, regardless of whether the business entity distributing the dividend or equivalent equity distribution is

the issuer, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend in the event that each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

(4) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(5) The issuance of securities to such equity security holders or creditors of a business entity in the process of a reorganization of such business entity, made in good faith and not for the purpose of evading this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or the issuer's parent or subsidiary, and the other person, or the person's parent or subsidiary, are parties.

(7) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance

with s. 517.12(21).

(8) The offer or sale of securities under a bona fide employee stock purchase, savings, option, profit-sharing, pension, or similar employee benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees. This includes offers or sales of such securities to all of the following persons:

(a) Directors, managers, managing members, general partners, officers, consultants, and advisors.

(b) If the issuer is a business trust, trustees and former trustees.

(c) Family members who acquire such securities from persons described in this section through gifts or domestic relations orders.

(d) Former employees, directors, managers, managing members, general partners, officers, consultants, and advisors, if those individuals were employed by or providing services to the issuer when the securities were offered.

(e) Insurance agents who are exclusive insurance agents of the issuer, or of the issuer's parents or subsidiaries, or who derive more than 50 percent of their annual income from such persons.

(9) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of

1940, 15 U.S.C. s. 80a-3, as amended, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity.

(10)(a) The offer or sale, by or on behalf of an issuer, of its own securities if the offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information, which must include written notification of a purchaser's right to void the sale under subparagraph 4.

4. Any sale made pursuant to this subsection is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure document provided to the purchaser or purchaser's representative or by hand delivery, courier service, or other

method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any spouse or child of the purchaser or any related family member who has the same principal residence as such purchaser.

2. A trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any business entity specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest, excluding any contingent interest.

3. A business entity in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. An accredited investor.

A business entity must be counted as one purchaser. However, if the business entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor, each beneficial owner of equity securities or equity interests in the business entity must be counted as a separate purchaser. A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 must be counted as one purchaser if the trustee makes all investment decisions for the plan.

(11) Offers or sales of securities by an issuer in a transaction that meets all of the following conditions:

(a) The offers or sales of securities are made only to persons who are, or who the issuer reasonably believes are, accredited investors.

(b) The issuer is not a business entity that has an undefined business operation, lacks a business plan, lacks a stated investment goal for the funds being raised, or plans to engage in a merger or acquisition with an unspecified business entity.

(c) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months after sale is presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under this chapter or pursuant to an exemption available under this chapter, the Securities Act of 1933, as amended, or the rules and regulations adopted thereunder.

(d)1. A general announcement of the proposed offering, made by any means, includes only the following information:

a. The name, address, and telephone number of the issuer of the securities.

b. The name, a brief description, and price, if known, of any security to be issued.

c. A brief description of the business.

d. The type, number, and aggregate amount of securities being offered.

e. The name, address, and telephone number of the person to contact for additional information.

f. A statement that:

(I) Sales will be made only to accredited investors;

(II) Money or other consideration is not being solicited and will not be accepted by way of this general announcement; and

(III) The securities have not been registered with or approved by any state securities agency or the Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

2. The issuer, in connection with an offer, may provide information in addition to the information provided in the general announcement as specified in subparagraph 1. if such information is delivered:

a. Through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

b. After the issuer reasonably believes that the prospective purchaser is an accredited investor.

(e) The issuer does not use telephone solicitation unless, before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(f) The issuer files with the office a notice of transaction, a consent to service of process, and a copy of the general announcement within 15 days after the first sale is made in this state. The commission may adopt by rule procedures for filing documents by electronic means.

(g) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors

does not disqualify the issuer from claiming the exemption under this subsection.

(12) The isolated sale or offer for sale of securities when made by or on behalf of a bona fide owner, not the issuer or underwriter, of the securities, who disposes of such securities for the owner's own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a bona fide owner, rather than the issuer or underwriter, of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the conditions specified in paragraphs (10)(a) and (b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(a)(1) of the Securities Act of 1933, as amended, or under Securities and Exchange Commission rules or regulations.

(13) By or for the account of a pledgeholder, a secured party as defined in s. 679.1021(1)(ttt), or a mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(14) An unsolicited purchase or sale of securities on order of, and as the agent for, another solely and exclusively by a dealer registered pursuant to s. 517.12; provided that this

exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities at the direction of, and as agent for, another by any person other than a dealer so registered; and provided further that such purchase or sale may not be directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading this chapter.

(15) A nonissuer transaction with a federal covered adviser with investments under management in excess of $100 million acting in the exercise of discretionary authority in a signed record for the account of others.

(16) The sale by or through a registered dealer of any securities option if, at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

(b)1. Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by commission rule;

2. The option is not sold by or for the benefit of the issuer of the underlying security; and

3. The underlying security may be purchased or sold on a recognized securities exchange registered under the Securities Exchange Act of 1934, as amended.

(17)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when

such securities are offered or sold at a price reasonably related to the current market price of such securities, provided that such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended; or

4. Securities, other than any security that is a federal covered security and is not subject to any registration or filing requirements under this chapter, that have been listed or approved for listing upon notice of issuance by a securities exchange registered under the Securities Exchange Act of 1934, as amended; and all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by an issuer with a class of securities listed or approved for listing upon notice of issuance by such securities exchange, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided in this subparagraph does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or a control person of such issuer or if such

securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) The exemption provided in this subsection is not available for any securities that have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as the office finds proper.

(18) Any nonissuer transaction by a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, as amended, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided that, at the time of the transaction, the following conditions in paragraphs (a), (b), and (c) and either paragraph (d) or (e) are met:

(a) The issuer of the security is actually engaged in business and is not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(b) The security is sold at a price reasonably related to the current market price of the security.

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the dealer as an underwriter of the security.

(d) The security is listed in a nationally recognized securities manual designated by rule of the commission or a

document filed with and publicly viewable through the Securities and Exchange Commission electronic data gathering and retrieval system and contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement.

(e)1. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, as amended;

2. The class of security is quoted, offered, purchased, or sold through an alternative trading system registered under Securities and Exchange Commission Regulation ATS, 17 C.F.R. s. 242.301, as amended, and the issuer of the security has made current information publicly available in accordance with Securities and Exchange Commission Rule 15c2-11, 17 C.F.R. s.

240.15c2-11, as amended;

3. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, as amended;

4. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

5. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(19) The offer or sale of any security effected by or through a person in compliance with s. 517.12(16).

(20) A nonissuer transaction in an outstanding security by or through a dealer registered or exempt from registration under this chapter, if all of the following are true:

(a) The issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by commission rule, and the issuer has been subject to continuous reporting requirements in such foreign jurisdiction for not less than 180 days before the transaction.

(b) The security is listed on the securities exchange designated by this subsection or by commission rule, is a security of the same issuer which is of senior or substantially equal rank to the listed security, or is a warrant or right to purchase or subscribe to any such security.

For purposes of this subsection, Canada, together with its

provinces and territories, is designated as a foreign jurisdiction, and The Toronto Stock Exchange, Inc., is designated as a securities exchange. If, after an administrative hearing in compliance with ss. 120.569 and 120.57, the office finds that revocation is necessary or appropriate in furtherance of the public interest and for the protection of investors, it may revoke the designation of a securities exchange under this subsection.

(21) Other transactions exempted by commission rule upon a finding by the office that the application of s. 517.07 to a particular transaction is not necessary or appropriate in furtherance of the public interest and for the protection of investors due to the small dollar amount of the securities involved or the limited character of the offering. In conjunction with its adoption by rule of such exemptions, the commission may exempt persons selling or offering for sale securities in such a transaction from the registration requirements of s. 517.12. A rule adopted by the commission under this subsection may not have the effect of narrowing or limiting any exemption specified in this section.

Section 4. Section 517.0611, Florida Statutes, is amended to read:

517.0611 The Florida Limited Offering Exemption ~~Intrastate crowdfunding~~.—

(1) This section may be cited as ~~the~~ "The Florida Limited Offering ~~Intrastate Crowdfunding~~ Exemption."

(2) The registration provisions of s. 517.07 do not apply to a securities transaction conducted in accordance with this section; however, such transaction is subject to s. 517.301

~~Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s. 517.061~~.

(3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, ~~and United States~~ Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, as amended, or Securities and Exchange Commission Rule 147A, 17. C.F.R. s. 230.147A, as amended ~~adopted pursuant to the Securities Act of 1933~~.

(4) An issuer ~~must~~:

(a) Must be a for-profit business entity that maintains ~~formed under the laws of the state, be registered with the Secretary of State, maintain~~ its principal place of business ~~in the state,~~ and derives ~~derive~~ its revenues primarily from operations in this ~~the~~ state.

(b) Must conduct transactions for an ~~the~~ offering of $2.5 million or more through a dealer registered with the office or an intermediary registered under s. 517.12 ~~s. 517.12(19)~~. For an offering of less than $2.5 million, the issuer may, but is not required to, use such a dealer or intermediary.

(c) May not be, ~~either~~ before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended, or subject to the reporting requirements of s. 13 or s. 15(d) of

the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d), as amended.

(d) May not be a business entity that has ~~company with~~ an undefined business operation, ~~a company that~~ lacks a business plan, ~~a company that~~ lacks a stated investment goal for the funds being raised, or ~~a company that~~ plans to engage in a merger or acquisition with an unspecified business entity.

(e) May not be subject to a disqualification established by the commission ~~or office~~ or a disqualification described in s. 517.0616 or s. 517.1611 ~~or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933~~. Each director, officer, manager, managing member, or general partner, or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the equity interest ~~shares~~ of the issuer, is subject to this paragraph ~~requirement~~.

(f) Must deposit all funds received from investors in an account in ~~Execute an escrow agreement with~~ a federally insured financial institution authorized to do business in this ~~the~~ state, and maintain all such funds in the account until the target offering amount has been reached or the offering has been terminated or has expired. If the target offering amount has not been reached within the period specified by the issuer in the disclosure statement provided to investors, or if the offering is terminated or expires, the issuer must refund invested funds to all investors within 10 business days after such occurrence ~~for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than~~

~~the target offering amount~~.

(g) Must use all funds in accordance with the use of proceeds as disclosed to prospective investors ~~Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline~~.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The filing fee must ~~shall~~ be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in s. 517.101. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information, including an

e-mail address, of the issuer.

(d) Identify any predecessors, owners, officers, directors, general partners, managers, managing members, ~~and control persons~~ or any person occupying a similar status or performing a similar function of the issuer, including that person's title, ~~his or her~~ status as a partner, trustee, or sole proprietor or a similar role, and ~~his or her~~ ownership percentage.

(e) Identify the federally insured financial institution into~~, authorized to do business in the state, in~~ which investor funds will be deposited~~, in accordance with the escrow agreement~~.

(f) ~~Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.~~

~~(g) Include documentation verifying that the issuer is organized under the laws of the state and authorized to do business in the state.~~

~~(h)~~ If applicable, include the intermediary's website address where the issuer's securities will be offered.

(g)~~(i)~~ State ~~Include~~ the target offering amount and the date, not to exceed 365 days, by which the target amount must be reached in order to avoid termination of the offering.

(6) The issuer must amend the notice form within 10 business ~~30~~ days after any material information contained in the notice becomes inaccurate ~~for any reason~~. The commission may require, by rule, an issuer who has filed a notice under this

section to file amendments with the office.

(7) The issuer may engage in general advertising and general solicitation of the offering to prospective investors. Any oral or written statements in advertising or solicitation of the offering which contain a material misstatement, or which fail to disclose material information, are subject to enforcement under this chapter. Any general advertising or other general announcement must state that the offering is limited and open only to residents of this state.

(8) The issuer must provide a disclosure statement to ~~investors and the dealer or intermediary, along with a copy to the office at the time that the notice is filed, and make available to potential investors through~~ the dealer or intermediary, as applicable; to the office at the time that the notice is filed; and to each prospective investor at least 3 days before the investor's commitment to purchase or payment of any consideration. The~~, a~~ disclosure statement must contain ~~containing~~ material information about the issuer and the offering, including all of the following:

(a) The name, legal status, physical address, e-mail address, and website address of the issuer.

(b) The names of the directors, officers, managers, managing members, and general partners and any person occupying a similar status or performing a similar function, and the name and ownership percentage of each person holding more than 20 percent of the issuer's equity interests ~~shares of the issuer~~.

(c) A description of the current business ~~of the issuer~~ and ~~the~~ anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of

the proceeds of the offering.

(e) The target offering amount and~~,~~ the deadline to reach the target offering amount~~, and regular updates regarding the progress of the issuer in meeting the target offering amount~~.

(f) The price to the public of the securities ~~or the method for determining the price. However, before the sale, each investor must receive in writing the final price and all required disclosures and have an opportunity to rescind the commitment to purchase the securities~~.

(g) A description of the ownership and capital structure of the issuer, including:

1. Terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer.

2. A description of how the exercise of the rights held by the principal equity holders ~~shareholders~~ of the issuer could negatively impact the purchasers of the securities being offered.

~~3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer.~~

~~4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions.~~

~~5. The risks to purchasers of the securities relating to~~

~~minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.~~

(h) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in Securities and Exchange Commission Rule 147 or Rule 147A.

(i) Any issuer plans, formal or informal, to offer additional securities in the future.

(j) The risks to purchasers of the securities relating to minority ownership in the issuer.

(k)~~(h)~~ A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of $500,000 ~~$100,000~~ or less, the financial statements of the issuer may be, but are not required to be, included ~~description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects~~.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of more than $500,000 ~~$100,000~~, but not more than $2.5 million ~~$500,000~~, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a

certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures ~~for such review~~ or standards and procedures established by commission ~~the office, by~~ rule~~,~~ for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of more than $2.5 million ~~$500,000~~, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(l)~~(i)~~ The following statement in boldface, conspicuous type on the front page of the disclosure statement:

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this disclosure statement is truthful or complete. Any representation to the contrary is a criminal offense.

These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. ~~Consequently,~~ Neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the

offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

~~(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.~~

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $5 ~~$1~~ million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding equity interests ~~shares~~ of any class or classes of securities or to an officer, director, manager, managing member, general partner, or trustee, or a person occupying a similar

status, do not count toward this limitation.

(10) Unless the investor is an accredited investor, or the issuer reasonably believes that the investor is an accredited investor ~~as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933~~, the aggregate amount of securities sold by an issuer to an investor ~~in transactions exempt from registration requirements under this subsection~~ in a 12-month period may not exceed $10,000~~:~~

~~(a) The greater of $2,000 or 5 percent of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000.~~

~~(b) Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or exceeds $100,000~~.

~~(11) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days after the end of its fiscal year, until no securities under this offering are outstanding. The annual reports must meet the following requirements:~~

~~(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other~~

~~compensation received.~~

~~(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.~~

(11)~~(12)(a)~~ A notice-filing under this section must ~~shall~~ be summarily suspended by the office if:

(a) The payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn; or~~.~~

(b) ~~A notice-filing under this section shall be summarily suspended by the office if~~ The issuer made a material false statement in the issuer's notice-filing. The summary suspension remains ~~shall remain~~ in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office must ~~shall~~ enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.191(9) ~~s. 517.221(3)~~, and issue permanent bars under s. 517.191(10) ~~s. 517.221(4)~~ to the issuer and all owners, officers, directors, general partners, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title; status as a partner,

trustee, sole proprietor, or similar role; and ownership percentage.

(12) ~~(13)~~ If the issuer employs the services of an intermediary, the ~~An~~ intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to the ~~transactions, including verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential~~ offering.

(b) Provide ~~basic~~ information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The ~~basic~~ information must include, but need not be limited to, all of the following:

1. A description of the financial institution into which investor funds will be deposited ~~escrow agreement that the issuer has executed~~ and the conditions for the use ~~release~~ of such funds by ~~to~~ the issuer ~~in accordance with the agreement and subsection (4)~~.

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain from each prospective investor a zip code or residence address, a copy of a driver license, and any other proof of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of this state. The commission may adopt rules authorizing

additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor.

(d) Obtain information sufficient for the issuer or intermediary to reasonably believe that a particular prospective investor is an accredited investor

~~(c) Obtain a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of the state.~~

~~(d) Obtain and verify a valid Florida driver license number or Florida identification card number from each investor before purchase of a security to confirm that the investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the investor.~~

~~(e) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).~~

~~(f) Direct the release of investor funds in escrow in accordance with subsection (4).~~

~~(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold the funds for the benefit of the investor~~.

(e) ~~(h)~~ Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each

cancellation of commitment to invest, in the previous calendar month.

~~(i) Require each investor to certify in writing, including as part of such certification his or her signature and his or her initials next to each paragraph of the certification, as follows:~~

~~I understand and acknowledge that:~~

~~I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.~~

~~This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.~~

~~The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.~~

~~I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.~~

~~By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.~~

~~If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.~~

~~(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.~~

(f) ~~(k)~~ Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(g) ~~(l)~~ Prohibit its directors, ~~and~~ officers, managers, managing members, general partners, employees, and agents from having any financial interest in the issuer using its services.

~~(m) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with the anti-money laundering requirements of 31 C.F.R. chapter X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 relating to brokers.~~

(13) ~~(14)~~ An intermediary not registered as a dealer under s. 517.12(5) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or

displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any prospective ~~potential~~ investor.

(f) Engage in any other activities set forth by commission rule.

(14) If the issuer does not employ a dealer or an intermediary for an offering pursuant to the exemption created under this section, the issuer must fulfill each of the obligations specified in paragraphs (12)(c)-(f).

(15) Any sale made pursuant to the exemption created under this section is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure statement that is provided to the purchaser or purchaser's representative or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in the disclosure statement ~~All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor~~.

Section 5. Section 517.0612, Florida Statutes, is created

to read:

517.0612 Florida Invest Local Exemption.—

(1) This section may be cited as the "Florida Invest Local Exemption."

(2) The registration provisions of s. 517.07 do not apply to a securities transaction conducted in accordance with this section; however, such transaction is subject to s. 517.301.

(3) The offer or sale of securities under this section must meet the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, Securities and Exchange Commission Rule 147, or Securities and Exchange Commission Rule 147A, as amended.

(4) The issuer must be a for-profit business entity registered with the Department of State which has its principal place of business in this state. The issuer may not be, before or as a result of the offering:

(a) An investment company as defined in the Investment Company Act of 1940, as amended;

(b) Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;

(c) A business entity that has an undefined business operation, lacks a business plan, lacks a stated investment goal for the funds being raised, or plans to engage in a merger or acquisition with an unspecified business entity; or

(d) Subject to a disqualification as provided in s. 517.0616.

(5) The sum of all cash and other consideration received from all sales of the securities in reliance upon the exemption under this section may not exceed $500,000, less the aggregate

amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption.

(6)(a) The issuer may not accept more than $10,000 from any single purchaser unless any of the following apply:

1. The issuer reasonably believes that the purchaser is an accredited investor.

2. The purchaser is an officer, director, partner, or trustee, or an individual occupying a similar status or performing similar functions, of the issuer.

3. The purchaser is an owner of 10 percent or more of the issuer's outstanding equity.

(b) For purposes of this subsection, the following persons must be treated collectively as a single purchaser:

1. Any spouse or child of the purchaser or any related family member who has the same primary residence as the purchaser.

2. Any business entity of which the purchaser and any person related to the purchaser as provided in subparagraph 1. collectively own more than 50 percent of the equity interest.

(7) The issuer may engage in general advertising and general solicitation of the offering. Any general advertising or other general announcement must state that the offer is limited and open only to residents of this state. Any oral or written statements in advertising or solicitation of the offer which contain a material misstatement, or which fail to disclose material information, are subject to enforcement under this chapter.

(8) A purchaser must receive, at least 3 business days

before any binding commitment to purchase or consideration paid, a disclosure statement that provides material information regarding the issuer, including, but not limited to, all of the following information:

(a) The issuer's name, type of entity, and contact information.

(b) The name and contact information of each director, officer, or other manager of the issuer.

(c) A description of the issuer's business.

(d) A description of the security being offered.

(e) The total amount of the offering.

(f) The intended use of proceeds from the sale of the securities.

(g) The target offering amount.

(h) A statement that if the target offering amount is not obtained in cash or in the value of other tangible consideration received on a date that is no more than 180 days after the commencement of the offering, the offering will be terminated, and any funds or other consideration received from purchasers must be promptly returned.

(i) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in Securities and Exchange Commission Rule 147 or Rule 147A.

(j) The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the issuer.

(k) The name of the bank or other depository institution into which investor funds will be deposited.

(l) The following statement in boldface, conspicuous type:

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined that this disclosure statement is truthful or complete. Any representation to the contrary is a criminal offense.

(9) All funds received from investors must be deposited into a bank or depository institution authorized to do business in this state. The issuer may not withdraw any amount of the offering proceeds unless the target offering amount has been received.

(10) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, no less than 5 business days before the offering commences, along with the disclosure statement described in subsection (8). If there are any material changes to the information previously submitted, the issuer, within 3 business days after such material change, must file an amended notice.

(11) An individual, entity, or entity employee who acts as an agent for the issuer in the offer or sale of securities and is not registered as a dealer under this chapter may not do either of the following:

(a) Receive compensation based upon the solicitation of purchases, sales, or offers to purchase the securities.

(b) Take custody of investor funds or securities.

(12) Any sale made pursuant to the exemption created under

this section is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure statement that is provided to a purchaser or the purchaser's representative or by hand delivery, courier service, or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

Section 6. Section 517.0613, Florida Statutes, is created to read:

517.0613 Failure to comply with a securities registration exemption.—

(1) Failure to meet the requirements for any exemption from securities registration does not preclude the issuer from claiming the availability of any other applicable state or federal exemption.

(2) The exemptions created under ss. 517.061, 517.0611, and 517.0612 are not available to an issuer for any transaction or series of transactions that, although in technical compliance with the applicable provisions, is part of a plan or scheme to evade the registration provisions of s. 517.07, and registration under s. 517.07 is required in connection with such transactions.

Section 7. Section 517.0614, Florida Statutes, is created to read:

517.0614 Integration of offerings.—

(1) If the safe harbors in subsection (2) do not apply, in

determining whether two or more offerings are to be treated as one for the purpose of registration or qualifying for an exemption from registration under this chapter, offers and sales may not be integrated if, based on the particular facts and circumstances, the issuer can establish either that each offering complies with the registration requirements of this chapter, or that an exemption from registration is available for the particular offering, provided that any transaction or series of transactions that, although in technical compliance with this chapter, is part of a plan or scheme to evade the registration requirements of this chapter will not have the effect of avoiding integration. In making this determination:

(a) For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer or any person acting on the issuer's behalf:

1. Did not solicit such purchaser through the use of general solicitation; or

2. Established a substantive relationship with such purchaser before the commencement of the exempt offering prohibiting general solicitation, provided that a purchaser previously solicited through the use of general solicitation is not deemed to have been solicited through the use of general solicitation in the current offering if, during the 45 calendar days following such previous general solicitation:

a. No offer or sale of the same or similar class of securities has been made by or on behalf of the issuer, including to such purchaser; and

b. The issuer or any person acting on the issuer's behalf has not solicited such purchaser through the use of general solicitation for any other security.

(b) For two or more concurrent exempt offerings permitting general solicitation, in addition to satisfying the requirements of the particular exemption relied on, general solicitation offering materials for one offering that includes information about the material terms of a concurrent offering under another exemption may constitute an offer of securities in such other offering, and therefore the offer must comply with all the requirements for, and restrictions on, offers under the exemption being relied on for such other offering, including any legend requirements and communications restrictions.

(2) The integration analysis required by subsection (1) is not required if any of the following nonexclusive safe harbors apply:

(a) An offering commenced more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, may not be integrated with such other offering, provided that for an exempt offering for which general solicitation is not permitted which follows by 30 calendar days or more an offering that allows general solicitation, paragraph (1)(a) applies.

(b) Offers and sales made in compliance with any of the following provisions are not subject to integration with other offerings:

1. Section 517.051 or s. 517.061, except s. 517.061(9), (10), or (11).

2. Section 517.0611 or s. 517.0612.

Section 8. Section 517.0615, Florida Statutes, is created to read:

517.0615 Solicitations of interest.—

(1) A communication may not be deemed to constitute general solicitation or general advertising if the communication is made in connection with a seminar or meeting in which more than one issuer participates and which is sponsored by a college, a university, or another institution of higher education; a state or local government or an instrumentality thereof; a nonprofit chamber of commerce or other nonprofit organization; or an angel investor group, incubator, or accelerator, if all of the following apply:

(a) Advertising for the seminar or meeting does not reference a specific offering of securities by the issuer.

(b) The sponsor of the seminar or meeting does not do any of the following:

1. Make investment recommendations or provide investment advice to attendees of the seminar or meeting.

2. Engage in any investment negotiations between the issuer and investors attending the seminar or meeting.

3. Charge attendees of the seminar or meeting any fees, other than reasonable administrative fees.

4. Receive any compensation for making introductions between seminar or meeting attendees and issuers or for investment negotiations between such parties.

5. Receive any compensation with respect to the seminar or meeting, which compensation would require registration or notice-filing under this chapter, the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., as amended, or the Investment

Advisers Act of 1940, 15 U.S.C. s. 80b-1 et seq., as amended. The sponsorship or participation in the seminar or meeting does not by itself require registration or notice-filing under this chapter.

(c) The type of information regarding an offering of securities by the issuer which is communicated or distributed by or on behalf of the issuer in connection with the seminar or meeting is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, the intended use of proceeds of the offering, and the unsubscribed amount in an offering.

(d) If the event allows attendees to participate virtually, rather than in person, online participation in the event is limited to:

1. Individuals that are members of, or otherwise associated with, the sponsor organization;

2. Individuals that the sponsor reasonably believes are accredited investors; or

3. Individuals that have been invited to the event by the sponsor based on industry or investment-related experience reasonably selected by the sponsor in good faith and disclosed in the public communications about the event.

(2) Before any offers or sales are made in connection with an offering, communications by an issuer or any person authorized to act on behalf of the issuer are not deemed to constitute general solicitation or general advertising if the communication is solely for the purpose of determining whether there is any interest in a contemplated securities offering.

Requirements imposed under this chapter on written or oral statements made in the course of such communication may be enforced as provided in this chapter. The solicitation or acceptance of money or other consideration or of any commitment, binding or otherwise, from any person is prohibited.

(a) The communication must state all of the following:

1. Money or other consideration is not being solicited and, if sent in response, will not be accepted.

2. Any offer to buy the securities will not be accepted, and no part of the purchase price will be accepted.

3. A person's indication of interest does not involve obligation or commitment of any kind.

(b) Any written communication under this subsection may include a means by which a person may indicate to the issuer that the person is interested in a potential offering. The issuer may require the name, address, telephone number, or e-mail address in any response form included in the written communication under this paragraph.

(c) A communication in accordance with this subsection is not subject to s. 501.059, regarding telephone solicitations.

Section 9. Section 517.0616, Florida Statutes, is created to read:

517.0616 Disqualification.—A registration exemption under s. 517.061(9), (10), and (11), s. 517.0611, or s. 517.0612 is not available to an issuer that would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d), as amended, at the time the issuer makes an offer for the sale of a security.

Section 10. Present subsections (4) through (8) of section

517.081, Florida Statutes, are redesignated as subsections (6) through (10), respectively, new subsections (4) and (5) are added to that section, and subsection (2), paragraph (g) of subsection (3), and present subsection (7) of that section are amended, to read:

517.081 Registration procedure.—

(2) The office shall receive and act upon applications for the registration of ~~to have~~ securities ~~registered, and the commission may prescribe forms on which it may require such applications to be submitted~~. Applications must ~~shall~~ be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the office. ~~The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section.~~ An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell such securities ~~the same~~ within the state.

(3) The office may require the applicant to submit to the office the following information concerning the issuer and such other relevant information as the office may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(g)~~1.~~ A specimen copy of the securities certificate, if applicable, and a copy of any circular, prospectus, advertisement, or other description of such securities.

~~2. The commission shall adopt a form for a simplified offering circular to register, under this section, securities~~

~~that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:~~

~~a. An issuer seeking to register securities for resale by persons other than the issuer.~~

~~b. An issuer that is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or equity owner who owns at least 10 percent of the ownership interests of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, partner, or manager or managing member of such selling agent.~~

~~c. An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.~~

~~d. An issuer of offerings in which the specific business or properties cannot be described.~~

~~e. Any issuer the office determines is ineligible because the form does not provide full and fair disclosure of material information for the type of offering to be registered by the~~

~~issuer.~~

~~f. Any issuer that has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.~~

~~As a condition precedent to qualifying for use of the simplified offering circular, an issuer shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.~~

(4) The commission may, by rule:

(a) Establish criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, oil and gas investments, and other investments. In establishing these criteria, the commission may consider the rules and regulations of the Securities and Exchange Commission and statements of policy by the North American Securities Administrators Association, Inc., relating to the registration of securities offerings. The criteria must include all of the following:

1. The promoter's equity investment ratio.

2. The financial condition of the issuer.

3. The voting rights of shareholders.

4. The grant of options or warrants to underwriters and others.

5. Loans and other transactions with affiliates of the issuer.

6. The use, escrow, or refund of proceeds of the offering.

(b) Prescribe forms requiring applications for the registration of securities to be submitted to the office, including a simplified offering circular to register, under this section, securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(c) Establish procedures for depositing fees and filing documents by electronic means, provided that such procedures provide the office with the information and data required by this section.

(d) Establish requirements and standards for the filing, content, and circulation of a preliminary, final, or amended prospectus, advertisements, and other sales literature. In establishing such requirements and standards, the commission shall consider the rules and regulations of the Securities and Exchange Commission relating to requirements for preliminary, final, or amended or supplemented prospectuses and the rules of the Financial Industry Regulatory Authority relating to advertisements and sales literature.

(5) All of the following issuers are not eligible to submit a simplified offering circular:

(a) An issuer that is subject to any of the

disqualifications described in Securities and Exchange Commission Rule 262, 17 C.F.R. s. 230.262, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this paragraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or a person owning at least 10 percent of the ownership interests of the issuer; a promoter or selling agent of the securities to be offered; or any officer, director, partner, or manager or managing member of such selling agent.

(b) An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified business entity or entities.

(c) An issuer of offerings in which the specific business or properties cannot be described.

(d) An issuer that the office determines is ineligible because the simplified circular does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

(9)(a) ~~(7)~~ The office shall record the registration of a security in the register of securities if, upon examination of an ~~any~~ application, it finds that all of the following requirements are met: ~~the office~~

1. The application is complete.

2. The fee imposed in subsection (8) has been paid.

3. The sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser.

4. The terms of the sale of such securities would be fair,

just, and equitable.

5. The enterprise or business of the issuer is not based upon unsound business principles.

(b) Upon registration, the security may be sold by the issuer or any registered dealer, subject, however, to the further order of the office ~~shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the office. In order to determine if an offering is fair, just, and equitable, the commission may by rule establish requirements and standards for the filing, content, and circulation of any preliminary, final, or amended prospectus and other sales literature and may by rule establish merit qualification criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments, including, but not limited to, oil and gas investments. The criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering, and such other relevant criteria as the office in its judgment may~~

~~deem necessary to such determination~~.

Section 11. Subsection (2) of section 517.101, Florida Statutes, is amended to read:

517.101 Consent to service.—

(2) Any such action must ~~shall~~ be brought either in the county of the plaintiff's residence or in the county in which the office has its official headquarters. The written consent must ~~shall~~ be authenticated by the seal of the ~~said~~ issuer, if it has a seal, and by the acknowledged signature of a director, manager, managing member, general partner, trustee, or officer of the issuer ~~member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association,~~ and must ~~shall in such case~~ be accompanied by a duly certified copy of the resolution of the issuer's board of directors, trustees, managers, managing members, or general partners ~~or managers of the corporation or association,~~ authorizing the signer to execute the consent ~~officers to execute the same~~. In case any process or pleadings mentioned in this chapter are served upon the office, service must ~~it shall~~ be by duplicate copies, one of which must ~~shall~~ be filed in the office and the other ~~another~~ immediately forwarded by the office by registered mail to the principal office of the issuer against which the ~~said~~ process or pleadings are directed.

Section 12. Section 517.131, Florida Statutes, is amended to read:

517.131 Securities Guaranty Fund.—

(1) As used in this section, the term "final judgment" includes an arbitration award confirmed by a court of competent jurisdiction.

(2)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for associated persons must ~~shall~~ be part of the regular registration license fee and must ~~shall~~ be transferred to or deposited in the Securities Guaranty Fund.

(b) If the balance in the Securities Guaranty Fund at any time exceeds $1.5 million, transfer of assessment fees to the ~~this~~ fund must ~~shall~~ be discontinued at the end of that registration ~~license~~ year, and transfer of such assessment fees may ~~shall~~ not resume ~~be resumed~~ unless the fund balance is reduced below $1 million by disbursement made in accordance with s. 517.141.

~~(2) The Securities Guaranty Fund shall be disbursed as provided in s. 517.141 to a person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, investment adviser, or associated person who was licensed under this chapter at the time the act was committed:~~

~~(a) A violation of s. 517.07.~~

~~(b) A violation of s. 517.301.~~

(3) A ~~Any~~ person is eligible for payment ~~to seek recovery~~ from the Securities Guaranty Fund if the person:

(a)1. Holds an unsatisfied final judgment in which a wrongdoer was found to have violated s. 517.07 or s. 517.301;

2. Has applied any amount recovered from the judgment debtor or any other source to the damages awarded by the court or arbitrator;

3. Is a natural person who was a resident of this state, or is a business entity that was domiciled in this state, at the time of the violation of s. 517.07 or s. 517.301; and

4. Is seeking recovery for an act that occurred on or after October 1, 2024; or

(b) Is a receiver appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution under s. 517.191(3) as a result of a violation of s. 517.07 or s. 517.301 which has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (a)

~~(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections referred to in subsection (2).~~

~~(b) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by her or his search the person has discovered no property or assets; or she~~

~~or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment. To verify compliance with such condition, the office may require such person to have a writ of execution be issued upon such judgment, may require a showing that no personal or real property of the judgment debtor liable to be levied upon in complete satisfaction of the judgment can be found, or may require an affidavit from the claimant setting forth the reasonable searches and inquiries undertaken and the result of those searches and inquiries.~~

~~(c) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court.~~

~~(d) The act for which recovery is sought occurred on or after January 1, 1979.~~

~~(c) The office waives compliance with the requirements of paragraph (a) or paragraph (b). The office may waive such compliance if the dealer, investment adviser, or associated person which is the subject of the claim filed with the office is the subject of any proceeding in which a receiver has been appointed by a court of competent jurisdiction. If the office waives such compliance, the office may, upon petition by the debtor or the court-appointed trustee, examiner, or receiver, distribute funds from the Securities Guaranty Fund up to the amount allowed under s. 517.141. Any waiver granted pursuant to this section shall be considered a judgment for purposes of complying with the requirements of this section and of s. 517.141~~.

(4) A person who has done any of the following is not eligible for payment from the Securities Guaranty Fund:

(a) Participated or assisted in a violation of this chapter.

(b) Attempted to commit or committed a violation of this chapter.

(c) Profited from a violation of this chapter.

(5) An eligible person, or a receiver on behalf of the eligible person, seeking payment from the Securities Guaranty Fund must file with the office a written application on a form that the commission may prescribe by rule. The commission may adopt by rule procedures for filing documents by electronic means, provided that such procedures provide the office with the information and data required by this section. The application must be filed with the office within 1 year after the date of the final judgment, the date on which a restitution order has been ripe for execution, or the date of any appellate decision thereon, and, at minimum, must contain all of the following information:

(a) The eligible person's and, if applicable, the receiver's full name, address, and contact information.

(b) The person ordered to pay restitution.

(c) If the eligible person is a business entity, the eligible person's type and place of organization and, as applicable, a copy, as amended, of its articles of incorporation, articles of organization, trust agreement, or partnership agreement.

(d) Any final judgment and a copy thereof.

(e) Any restitution order pursuant to s. 517.191(3), and a

copy thereof.

(f) An affidavit from the eligible person stating either one of the following:

1. That the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment and, by the eligible person's search, that the eligible person has not discovered any property or assets.

2. That the eligible person has taken necessary action on the property and assets of the wrongdoers but the final judgment remains unsatisfied.

(g) If the application is filed by the receiver, an affidavit from the receiver stating the amount of restitution owed to the eligible person on whose behalf the claim is filed; the amount of any money, property, or assets paid to the eligible person on whose behalf the claim is filed by the person over whom the receiver is appointed; and the amount of any unsatisfied portion of any eligible person's order of restitution.

(h) The eligible person's residence or domicile at the time of the violation of s. 517.07 or s. 517.301 which resulted in the eligible person's monetary damages.

(i) The amount of any unsatisfied portion of the eligible person's final judgment.

(j) Whether an appeal or motion to vacate an arbitration award has been filed.

(6) If the office finds that a person is eligible for payment from the Securities Guaranty Fund and if the person has

complied with this section and the rules adopted under this section, the office must approve payment to such person from the fund. Within 90 days after the office's receipt of a complete application, each eligible person or receiver must be given written notice, personally or by mail, that the office intends to approve or deny, or has approved or denied, the application for payment from the Securities Guaranty Fund.

(7) Upon receipt by the eligible person or receiver of notice of the office's decision that the eligible person's or receiver's application for payment from the Securities Guaranty Fund is approved, and before any disbursement, the eligible person shall assign to the office on a form prescribed by commission rule all right, title, and interest in the final judgment or order of restitution equal to the amount of such payment.

(8) The office shall deem an application for payment from the Securities Guaranty Fund abandoned if the eligible person or receiver, or any person acting on behalf of the eligible person or receiver, fails to timely complete the application as prescribed by commission rule. The time period to complete an application must be tolled during the pendency of an appeal or motion to vacate an arbitration award.

~~(4) Any person who files an action that may result in the disbursement of funds from the Securities Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice by certified mail to the office as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Securities Guaranty Fund if all of the conditions specified in subsection (3) are satisfied.~~

~~(5) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying the procedures for complying with subsections (2), (3), and (4), including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims.~~

Section 13. Section 517.141, Florida Statutes, is amended to read:

517.141 Payment from the fund.—

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

(a) "Claimant" means a person determined eligible for payment under s. 517.131 that is approved by the office for payment from the Securities Guaranty Fund.

(b) "Final judgment" includes an arbitration award confirmed by a court of competent jurisdiction.

(c) "Specified adult" has the same meaning as in s. 517.34(1).

(2) A claimant is entitled to disbursement from the Securities Guaranty Fund in the amount equal to the lesser of:

(a) The unsatisfied portion of the claimant's final judgment or final order of restitution, but only to the extent that the final judgment or final order of restitution reflects actual or compensatory damages, excluding postjudgment interest, costs, and attorney fees; or

(b)1. The sum of $15,000; or

2. If the claimant is a specified adult or if a specified adult is a beneficial owner or beneficiary of the claimant, the sum of $25,000 ~~Any person who meets all of the conditions prescribed in s. 517.131 may apply to the office for payment to be made to such person from the Securities Guaranty Fund in the~~

~~amount equal to the unsatisfied portion of such person's judgment or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages, excluding postjudgment interest, costs, and attorney's fees~~.

(3)~~(2)~~ Regardless of the number of claims or claimants involved, payments for claims are ~~shall be~~ limited in the aggregate to $250,000 ~~$100,000~~ against any one ~~dealer, investment adviser, or associated~~ person. If the total claim filed by a receiver on behalf of multiple claimants exceeds ~~claims exceed~~ the aggregate limit of $250,000 ~~$100,000~~, the office must ~~shall~~ prorate the payment to each claimant based upon the ratio that each claimant's individual ~~the person's~~ claim bears to the total claim ~~claims~~ filed.

(4) If at any time the balance in the Securities Guaranty Fund is insufficient to satisfy a valid claim or portion of a valid claim approved by the office, the office must satisfy the unpaid claim or portion of the valid claim as soon as a sufficient amount of money has been deposited into or transferred to the Securities Guaranty Fund. If more than one unsatisfied claim is outstanding, the claims must be paid in the sequence in which the claims were approved by final order of the office, which final order is not subject to an appeal or other pending proceeding.

(5) All payments and disbursements made from the Securities Guaranty Fund must be made by the Chief Financial Officer, or his or her designee, upon authorization by the office. The office shall submit such authorization within 30 days after the approval of an eligible person for payment from the Securities

Guaranty Fund

~~(3) No payment shall be made on any claim against any one dealer, investment adviser, or associated person before the expiration of 2 years from the date any claimant is found by the office to be eligible for recovery pursuant to this section. If during this 2-year period more than one claim is filed against the same dealer, investment adviser, or associated person, or if the office receives notice pursuant to s. 517.131(4) that an action against the same dealer, investment adviser, or associated person is pending, all such claims and notices of pending claims received during this period against the same dealer, investment adviser, or associated person may be handled by the office as provided in this section. Two years after the first claimant against that same dealer, investment adviser, or associated person applies for payment pursuant to this section:~~

~~(a) The office shall determine those persons eligible for payment or for potential payment in the event of a pending action. All such persons may be entitled to receive their pro rata shares of the fund as provided in this section.~~

~~(b) Those persons who meet all the conditions prescribed in s. 517.131 and who have applied for payment pursuant to this section will be entitled to receive their pro rata shares of the total disbursement.~~

~~(c) Those persons who have filed notice with the office of a pending claim pursuant to s. 517.131(4) but who are not yet eligible for payment from the fund will be entitled to receive their pro rata shares of the total disbursement once they have complied with subsection (1). However, in the event that the amounts they are eligible to receive pursuant to subsection (1)~~

~~are less than their pro rata shares as determined under this section, any excess shall be distributed pro rata to those persons entitled to disbursement under this subsection whose pro rata shares of the total disbursement were less than the amounts of their claims~~.

(6)~~(4)~~ Individual claims filed by persons owning the same joint account, or claims arising ~~stemming~~ from any other type of account ~~maintained by a particular licensee~~ on which more than one name appears, must ~~shall~~ be treated as the claims of one eligible claimant with respect to payment from the Securities Guaranty Fund. If a claimant who has obtained a final judgment or final order of restitution that ~~which~~ qualifies for disbursement under s. 517.131 has maintained more than one account with the ~~dealer, investment adviser, or associated~~ person who is the subject of the claims, for purposes of disbursement of the Securities Guaranty Fund, all such accounts, whether joint or individual, must ~~shall~~ be considered as one account and ~~shall~~ entitle such claimant to only one distribution from the fund ~~not to exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1)~~. To the extent that a claimant obtains more than one final judgment or final order of restitution against a person ~~dealer, investment adviser, or one or more associated persons~~ arising out of the same transactions, occurrences, or conduct or out of such ~~the dealer's, investment adviser's, or associated~~ person's handling of the claimant's account, the final ~~such~~ judgments or final orders of restitution must ~~shall~~ be consolidated for purposes of this section and ~~shall~~ entitle the claimant to only one disbursement from the fund ~~not to~~

~~exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1).~~

(7)~~(5)~~ If the final judgment or final order of restitution that gave rise to the claim is overturned in any appeal or in any collateral proceeding, the claimant must ~~shall~~ reimburse the Securities Guaranty Fund all amounts paid from the fund to the claimant on the claim. If the claimant satisfies the final judgment or final order of restitution ~~specified in s. 517.131(3)(a)~~, the claimant must ~~shall~~ reimburse the Securities Guaranty Fund all amounts paid from the fund to the claimant on the claim. Such reimbursement must ~~shall~~ be paid to the Department of Financial Services ~~office~~ within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of the final judgment or order of restitution, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.

(8)~~(6)~~ If a claimant receives payments in excess of that which is permitted under this chapter, the claimant must ~~shall~~ reimburse the Securities Guaranty Fund such excess within 60 days after the claimant receives such excess payment or after the payment is determined to be in excess of that permitted by law, whichever is later.

(9) A claimant who knowingly and willfully files or causes to be filed an application under s. 517.131 or documents supporting the application, any of which contain false, incomplete, or misleading information in any material aspect, forfeits all payments from the Securities Guaranty Fund and commits a violation of s. 517.301(1)(c).

(10)~~(7)~~ The Department of Financial Services ~~office~~ may

institute legal proceedings to enforce compliance with this section and with s. 517.131 to recover moneys owed to the Securities Guaranty Fund, and is ~~shall be~~ entitled to recover interest, costs, and attorney ~~attorney's~~ fees in any action brought pursuant to this section in which the department ~~office~~ prevails.

~~(8) If at any time the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.~~

~~(9) Upon receipt by the claimant of the payment from the Securities Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the office. If the provisions of s. 517.131(3)(c) apply, the claimant must assign to the office any right, title, and interest in the debt to the extent of any payment by the office from the Securities Guaranty Fund.~~

~~(10) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization signed by the director of the office, or such agent as she or he may designate.~~

Section 14. Section 517.191, Florida Statutes, is amended to read:

517.191 Enforcement by the Office of Financial Regulation

~~Injunction to restrain violations; civil penalties~~; enforcement by Attorney General.—

(1) When it appears to the office, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court proceedings, the office may apply for, and on due showing be entitled to have issued, the court's subpoena requiring forthwith the appearance of any defendant and her or his employees, associated persons, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the ~~equity~~ courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

(2) In addition to all other means provided by law for the

enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the office, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of such ~~said~~ property and business as may ~~shall from time to time~~ be conferred upon her or him by the court. In any such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of such ~~the said~~ property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing such ~~the said~~ receiver or administrator.

(3) In addition to, or in lieu of, any other remedies provided by this chapter, the office may apply to the court hearing the ~~this~~ matter for an order directing the defendant to make restitution of those sums shown by the office to have been obtained in violation of ~~any of the provisions of~~ this chapter. The office has standing to request such restitution on behalf of victims in cases brought by the office under this chapter, regardless of the appointment of an administrator or receiver under subsection (2) or an injunction under subsection (1). Further, such restitution must ~~shall~~, at the option of the

court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

(4) In addition to any other remedies provided by this chapter, the office may apply to the court hearing the matter for, and the court has ~~shall have~~ jurisdiction to impose, a civil penalty against any person found to have violated ~~any provision of~~ this chapter, any rule or order adopted by the commission or the office, or any written agreement entered into with the office in an amount not to exceed any of the following:

(a) The greater of $20,000 ~~$10,000~~ for a natural person or $25,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each such violation, other than a violation of s. 517.301, plus the greater of $50,000 for a natural person or $250,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each violation of s. 517.301.

(b) Twice the amount of the civil penalty that would otherwise be imposed under this subsection if a specified adult, as defined in s. 517.34(1), is the victim of a violation of this chapter.

All civil penalties collected pursuant to this subsection must ~~shall~~ be deposited into the Anti-Fraud Trust Fund. The office may recover any costs and attorney fees related to its investigation or enforcement of this section. Notwithstanding

any other law, such moneys recovered by the office must be deposited into the Anti-Fraud Trust Fund.

(5) For purposes of any action brought by the office under this section, a control person who controls any person found to have violated this chapter or any rule adopted thereunder is jointly and severally liable with, and to the same extent as, the controlled person in any action brought by the office under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(6) For purposes of any action brought by the office under this section, a person who knowingly or recklessly provides substantial assistance to another person in violation of this chapter or any rule adopted thereunder is deemed to violate this chapter or the rule to the same extent as the person to whom such assistance is provided.

(7) The office may issue and serve upon a person a cease and desist order if the office has reason to believe that the person violates, has violated, or is about to violate this chapter, any commission or office rule or order, or any written agreement entered into with the office.

(8) If the office finds that any conduct described in subsection (7) presents an immediate danger to the public, requiring an immediate final order, the office may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named in the order and remains effective

for 90 days after issuance. If the office begins nonemergency cease and desist proceedings under subsection (7), the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

(9) The office may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office in an amount not to exceed the penalties provided in subsection (4). All fines collected under this subsection must be deposited into the Anti-Fraud Trust Fund.

(10) The office may bar, permanently or for a specific period of time, any person found to have violated this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office from submitting an application or notification for a license or registration with the office.

(11) In addition to all other means provided by law for enforcing ~~any of the provisions of~~ this chapter, when the Attorney General, upon complaint or otherwise, has reason to believe that a person has engaged or is engaged in any act or practice constituting a violation of s. 517.275 or~~,~~ s. 517.301, ~~s. 517.311, or s. 517.312,~~ or any rule or order issued under such sections, the Attorney General may investigate and bring an action to enforce these provisions as provided in ss. 517.171, 517.201, and 517.2015 after receiving written approval from the office. Such an action may be brought against such person and any other person in any way participating in such act or practice or engaging in such act or practice or doing any act in

furtherance of such act or practice, to obtain injunctive relief, restitution, civil penalties, and any remedies provided for in this section. The Attorney General may recover any costs and attorney fees related to the Attorney General's investigation or enforcement of this section. Notwithstanding any other provision of law, moneys recovered by the Attorney General for costs, attorney fees, and civil penalties for a violation of s. 517.275 or~~,~~ s. 517.301, ~~s. 517.311, or s. 517.312,~~ or any rule or order issued pursuant to such sections, must ~~shall~~ be deposited in the Legal Affairs Revolving Trust Fund. The Legal Affairs Revolving Trust Fund may be used to investigate and enforce this section.

(12)~~(6)~~ This section does not limit the authority of the office to bring an administrative action against any person that is the subject of a civil action brought pursuant to this section or limit the authority of the office to engage in investigations or enforcement actions with the Attorney General. However, a person may not be subject to both a civil penalty under subsection (4) and an administrative fine under subsection (9) ~~s. 517.221(3)~~ as the result of the same facts.

(13)~~(7)~~ Notwithstanding s. 95.11(4)(f), an enforcement action brought under this section based on a violation of ~~any provision of~~ this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.

(14) This chapter does not limit any statutory right of the state to punish a person for a violation of a law.

(15) When not in conflict with the Constitution or laws of the United States, the courts of this state have the same jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as the courts of this state may have with regard to similar cases instituted under the laws of this state.

Section 15. Section 517.211, Florida Statutes, is amended to read:

517.211 Private remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17) may be rescinded at the election of the purchaser; however, ~~except~~ a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification or ~~shall not be subject to this section, and a sale made~~ in violation of the provisions of s. 517.12(12) relating to filing a change of address amendment is ~~shall~~ not ~~be~~ subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days after ~~of~~ receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the

purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

(2) Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

(3) For purposes of any action brought under this section, a control person who controls any person found to have violated any provision specified in subsection (1) is jointly and severally liable with, and to the same extent as, such controlled person in any action brought under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(4) In an action for rescission:

(a) A purchaser may recover the consideration paid for the

security or investment, plus interest thereon at the legal rate from the date of purchase, less the amount of any income received by the purchaser on the security or investment upon tender of the security or investment.

(b) A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate from the date of purchase, less the amount of any income received by the defendant on the security.

(5) ~~(4)~~ In an action for damages brought by a purchaser of a security or investment, the plaintiff must ~~shall~~ recover an amount equal to the difference between:

(a) The consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase; and

(b) The value of the security or investment at the time it was disposed of by the plaintiff, plus the amount of any income received on the security or investment by the plaintiff.

(6) ~~(5)~~ In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:

(a) The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and

(b) The consideration received for the security, plus interest at the legal rate from the date of sale.

(7) ~~(6)~~ In any action brought under this section, including an appeal, the court shall award reasonable attorney ~~attorneys'~~ fees to the prevailing party unless the court finds that the award of such fees would be unjust.

(8) This chapter does not limit any statutory or common-law right of a person to bring an action in a court for an act involved in the sale of securities or investments.

(9) The same civil remedies provided by the laws of the United States for the purchasers or sellers of securities in interstate commerce also extend to purchasers or sellers of securities under this chapter.

Section 16. Section 517.221, Florida Statutes, is repealed.

Section 17. Section 517.241, Florida Statutes, is repealed.

Section 18. Section 517.301, Florida Statutes, is amended to read:

517.301 Fraudulent transactions; falsification or concealment of facts.—

(1) It is unlawful and a violation of ~~the provisions of~~ this chapter for a person:

(a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under ~~the provisions of~~ s. 517.051 and including any security sold in a transaction exempted under ~~the provisions of~~ s. 517.061, s. 517.0611, or s. 517.0612, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;

2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit

upon a person.

(b) By use of any means, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast that, although ~~which, though~~ not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount of the consideration.

(c) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(2) For purposes of ~~ss. 517.311 and 517.312 and~~ this section, the term "investment" means any commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

(a) The purchase of a business opportunity, business enterprise, or real property through a person licensed under chapter 475 or registered under former chapter 498; or

(b) The purchase of tangible personal property through a person not engaged in telephone solicitation, electronic mail, text messages, social media, or other electronic means where

~~said property is offered and sold in accordance with the following conditions:~~

~~1.~~ there are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.~~;~~

~~2. The tangible property is delivered to the purchaser within 30 days after sale, except that such 30-day period may be extended by the office if market conditions so warrant; and~~

~~3. The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that the amount of such refund may not exceed the bid price in effect at the time the property is returned to the seller. If the applicable sellers' market is closed at the time the property is returned to the seller for a refund, the amount of such refund shall be based on the bid price for such property at the next opening of such market.~~

(3) It is unlawful for a person in issuing or selling a security within this state, including a security exempted under s. 517.051 and including a transaction exempted under s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such security or business entity has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(4) It is unlawful for a person registered or required to be registered, or subject to the notice requirements, under this chapter, including such persons and issuers who are subject to s. 517.051, s. 517.061, s. 517.0611, s. 517.0612, or s. 517.081,

to misrepresent that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been approved, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(5) It is unlawful and a violation of this chapter for a person in connection with the offer or sale of an investment to obtain money or property by means of:

(a) A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States; or

(b) A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been approved, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(6)(a) Subsection (3) or subsection (4) may not be construed to prohibit a statement that a person or security is registered or has made a notice filing under this chapter if such statement is required by this chapter or rules promulgated thereunder and is true in fact and if the effect of such statement is not a misrepresentation.

(b) A statement that a person is registered made in connection with the offer or sale of a security under this chapter must include the following disclaimer: "Registration does not imply that such person has been sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United

States."

1. If the statement of registration is made in writing, the disclaimer must immediately follow such statement and must be in the same size and style of print as the statement of registration.

2. If the statement of registration is made orally, the disclaimer must be made or broadcast with the same force and effect as the statement of registration.

(7) It is unlawful and a violation of this chapter for a person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, a boiler room in this state which sells or offers for sale a security or investment in violation of subsection (1), subsection (3), subsection (4), subsection (5), or subsection (6).

Section 19. Section 517.311, Florida Statutes, is repealed.

Section 20. Section 517.312, Florida Statutes, is repealed.

Section 21. Subsections (1), (2), and (3) of section 517.072, Florida Statutes, are amended to read:

517.072 Viatical settlement investments.—

(1) The exemptions provided for by s. 517.051(6) and (11) ~~ss. 517.051(6), (8), and (10)~~ do not apply to a viatical settlement investment.

(2) The offering of a viatical settlement investment is not an exempt transaction under s. 517.061(10), (12), (13), and (18) ~~s. 517.061(2), (3), (8), (11), and (18)~~, regardless of whether the offering otherwise complies with the conditions of that section, unless such offering is to a qualified institutional buyer.

(3) The registration provisions of ss. 517.07 and 517.12 do

not apply to any of the following transactions in viatical settlement investments; however, such transactions in viatical settlement investments are subject to s. 517.301 ~~the provisions of ss. 517.301, 517.311, and 517.312~~:

(a) The transfer or assignment of an interest in a previously viaticated policy from a natural person who transfers or assigns no more than one such interest in a single calendar year.

(b) The provision of stop-loss coverage to a viatical settlement provider, financing entity, or related provider trust, as those terms are defined in s. 626.9911, by an authorized or eligible insurer.

(c) The transfer or assignment of a viaticated policy from a licensed viatical settlement provider to another licensed viatical settlement provider, a related provider trust, a financing entity, or a special purpose entity, as those terms are defined in s. 626.9911, or to a contingency insurer, provided that such transfer or assignment is not the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading ~~any provision of~~ this chapter.

(d) The transfer or assignment of a viaticated policy to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, qualified institutional buyer, or an accredited investor, provided such transfer or assignment is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(e) The transfer or assignment of a viaticated policy by a

conservator of a viatical settlement provider appointed by a court of competent jurisdiction who transfers or assigns ownership of viaticated policies pursuant to that court's order.

Section 22. Subsection (2), paragraph (a) of subsection (9), paragraph (j) of subsection (16), subsection (20), and paragraphs (b) and (c) of subsection (21) of section 517.12, Florida Statutes, are amended to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(2) The registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(6), (8), (9), (12), and (13) ~~s. 517.061(1)-(10), (12), (14), and (15)~~.

(9)(a) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(16)

(j) All fees collected under this subsection become the revenue of the state, except those assessments provided for under s. 517.131(2) ~~s. 517.131(1)~~, until the Securities Guaranty Fund has satisfied the statutory limits. Such fees are not returnable if a notice-filing is withdrawn.

(20) The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, with regard to ~~for~~ the sale of a security as defined in s. 517.021(25)(g) ~~s. 517.021(23)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection ~~shall~~ constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

(21)

(b) Prior to the completion of any securities transaction described in s. 517.061(7) ~~s. 517.061(22)~~, a merger and acquisition broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that:

1. After the transaction is completed, any person who acquires securities or assets of the eligible privately held company, acting alone or in concert, will be a control person of the eligible privately held company or will be a control person for the business conducted with the assets of the eligible privately held company; and

2. If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, before becoming legally bound to complete the transaction, receive or be given reasonable access to the most recent year-end financial statements of the issuer of the securities offered in exchange. The most recent year-end financial statements shall be customarily prepared by the

issuer's management in the normal course of operations. If the financial statements of the issuer are audited, reviewed, or compiled, the most recent year-end financial statements must include any related statement by the independent certified public accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(c) A merger and acquisition broker engaged in a transaction exempt under s. 517.061(7) ~~s. 517.061(22)~~ is exempt from registration under this section unless the merger and acquisition broker:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

2. Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07; or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

3. Engages on behalf of any party in a transaction involving a public shell company;

4. Is subject to a suspension or revocation of registration under s. 15(b)(4) of the Securities Exchange Act of 1934, 15

U.S.C. s. 78o(b)(4);

5. Is subject to a statutory disqualification described in s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(39);

6. Is subject to a disqualification under the United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or

7. Is subject to a final order described in s. 15(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4)(H).

Section 23. Subsection (6) of section 517.1201, Florida Statutes, is amended to read:

517.1201 Notice filing requirements for federal covered advisers.—

(6) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a notice filing is withdrawn.

Section 24. Subsections (4) and (8) of section 517.1202, Florida Statutes, are amended to read:

517.1202 Notice-filing requirements for branch offices.—

(4) A branch office notice-filing under this section shall be summarily suspended by the office if the notice-filer fails to provide to the office, within 30 days after a written request by the office, all of the information required by this section and the rules adopted under this section. The summary suspension shall be in effect for the branch office until such time as the notice-filer submits the requested information to the office,

pays a fine as prescribed by s. 517.191(9) ~~s. 517.221(3)~~, and a final order is entered. At such time, the suspension shall be lifted. For purposes of s. 120.60(6), failure to provide all information required by this section and the underlying rules constitutes immediate and serious danger to the public health, safety, and welfare. If the notice-filer fails to provide all of the requested information within a period of 90 days, the notice-filing shall be revoked by the office.

(8) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a branch office notice-filing is withdrawn.

Section 25. Subsection (2) of section 517.302, Florida Statutes, is amended to read:

517.302 Criminal penalties; alternative fine; Anti-Fraud Trust Fund; time limitation for criminal prosecution.—

(2) Any person who violates s. 517.301 ~~the provisions of s. 517.312(1)~~ by obtaining money or property of an aggregate value exceeding $50,000 from five or more persons is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. This act shall take effect October 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 532
Bill Number or Topic

793480
Amendment Barcode (if applicable)

Name Ash Mason

Phone 8504109789

Address 200 E. Gaines Street
Street

Email ash.mason@flofr.gov

Tallahassee FL 32399
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 Office of Financial Regulation

☐ 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. 2020-2022JointRules.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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February 15, 2024
Meeting Date

Fiscal Policy
Committee

SB 532
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tiffany Garling - FL Chamber

Phone 850-661-3339

Address 136 S. Bronough Street
Street

Email tgarling@flchamber.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 Chamber of Commerce

☐ 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. 2020-2022JointRules.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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2/15/24
Meeting Date

Fiscal Policy
Committee

SB 532
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Phone 850-205-9000

Address 119 South Monroe Street #200
Street

Email adl@mhdfirm.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: The Business Law Section of the Florida 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 532
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ash Mason

Phone 8504109789

Address 200 E. Gaines Street
Street

Email ash.mason@flofr.gov

Tallahassee FL 32399
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 Office of Financial Regulation

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	SB 570
INTRODUCER:	Senators Burgess and Grall
SUBJECT:	Alternative Headquarters for District Court of Appeal Judges
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.	Kolich	Harkness	ACJ	**Favorable**
3.	Davis	Yeatman	FP	**Favorable**

I. Summary:

SB 570 permits an eligible district court of appeal judge to designate an alternate official headquarters in a county that is *adjacent* to his or her county of residence that is within the judicial district. Current law only permits an official headquarters designation within the judge's county of residence.

The bill also establishes limits for travel reimbursements for court business. Although a judge who establishes an official headquarters in a county that is adjacent to his or her county of residence may need to travel further to the district court, the bill does not allow the judge to recover more travel expenses than if the judge established a headquarters in his home county.

The bill is not expected to have a significant fiscal impact on the State Courts System. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Current law allows a district court of appeal judge who permanently resides more than 50 miles from the district court of appeal courthouse to which he or she is assigned, to be eligible for the designation of a county courthouse or other appropriate facility in his or her county of residence as his or her alternate official headquarters, for the purpose of computing per diem and travel expenses.[1]

This designation of an alternate official headquarters allows the judge to be paid for mileage and subsistence for travel incurred on court business between the alternate headquarters and the

[1] Section 35.051, F.S.

district court of appeal headquarters or branch headquarters. However, the payment of subsistence and reimbursement for travel expenses between the alternate official headquarters and the district court of appeal headquarters or branch headquarters may be made only to the extent that appropriated funds are available as determined by the Chief Justice.[2]

III. Effect of Proposed Changes:

The bill amends existing law to permit an eligible district court of appeal judge to designate a courthouse or other appropriate facility in a county *adjacent* to his or her county of residence within the district as his or her alternate official headquarters. By permitting this additional alternate official headquarters, a judge may choose an appropriate facility that is actually closer to, or more accessible, than a courthouse or facility in the judge's home county.

The bill also provides that if the judge's designated official headquarters is located in a county adjacent to his or her county of residence, travel reimbursement will be limited to the lesser of:

- The amount for travel between the judge's official headquarters and the headquarters or branch headquarters of the appellate district; or
- The amount authorized for travel between an official headquarters maintained in the judge's county of residence and the headquarters or branch headquarters of the appellate district.

The bill does not expand eligibility for alternate official headquarters but will provide additional flexibility for judges, who live more than 50 miles from the court's headquarters or branch headquarters, in determining an alternate official headquarters.

The bill takes effect July 1, 2024.

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.

[2] Section 35.051(1)(c), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Courts Administrator, the bill is anticipated to have a minimal fiscal impact on expenditures of the State Courts System and may result in a cost savings if a shorter travel distance is achieved by designation of an alternate official headquarters in an adjacent county.[3]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 35.051 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.)

None.

B. Amendments:

None.

[3] Office of the State Courts Administrator, *2024 Judicial Impact Statement for SB 570*, https://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=35281.

By Senator Burgess

23-00853-24 2024570__

A bill to be entitled

An act relating to alternative headquarters for district court of appeal judges; amending s. 35.051, F.S.; authorizing a district court of appeal judge to have an appropriate facility in a county adjacent to his or her county of residence as the judge's official headquarters; authorizing subsistence and travel reimbursement to such judges; providing an effective date.

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

Section 1. Subsection (1) of section 35.051, Florida Statutes, is amended to read:

35.051 Subsistence and travel reimbursement for judges with alternate headquarters.—

(1)(a) A district court of appeal judge is eligible for the designation of a county courthouse or another appropriate facility in his or her county of residence, or an adjacent county within the district, as his or her official headquarters for purposes of s. 112.061 if the judge permanently resides more than 50 miles from:

1. The appellate district's headquarters as prescribed under s. 35.05(1), if the judge is assigned to such headquarters; or

2. The appellate district's branch headquarters established under s. 35.05(2), if the judge is assigned to such branch headquarters.

23-00853-24 2024570__

The official headquarters may serve only as the judge's private chambers.

(b)1. A district court of appeal judge for whom an official headquarters is designated under paragraph (a) ~~in his or her county of residence under this subsection~~ is eligible for subsistence at a rate to be established by the Chief Justice for each day or partial day that the judge is at the headquarters or branch headquarters of his or her appellate district to conduct court business, as authorized by the chief judge of that district court of appeal. The Chief Justice may authorize a judge to choose between subsistence based on lodging at a single-occupancy rate and meal reimbursement as provided in s. 112.061 and subsistence at a fixed rate prescribed by the Chief Justice.

2. In addition to subsistence, a district court of appeal judge is eligible for reimbursement for travel expenses as provided in s. 112.061(7) and (8) for travel between the judge's official headquarters and the headquarters or branch headquarters of the appellate district to conduct court business. If the judge's official headquarters designated under paragraph (a) is located in a county adjacent to the judge's county of residence, such reimbursement is limited to the lesser of:

a. The amount for travel between the judge's official headquarters and the headquarters or branch headquarters of the appellate district; or

b. The amount that would be authorized for travel between an official headquarters maintained in the judge's county of residence and the headquarters or branch headquarters of the

appellate district.

(c) Payment of subsistence and reimbursement for travel expenses between the judge's official headquarters and the headquarters or branch headquarters of his or her appellate district shall be made to the extent that appropriated funds are available, as determined by the Chief Justice.

Section 2. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

February 15, 2024
Meeting Date

Fiscal Policy
Committee

SB 570
Bill Number or Topic

Amendment Barcode (if applicable)

Name Clay Roberts

Phone (850) 487-1000

Address 2000 Drayton Drive
Street

Email

Tallahassee Florida 32399
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 Conference of DCA Judges

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 640
INTRODUCER:	Transportation Committee and Senator Berman
SUBJECT:	Purple Alert
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Vickers	TR	**Fav/CS**
2.	Kolich	Harkness	ACJ	**Favorable**
3.	Johnson	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 640 addresses Purple Alerts issued for missing adults meeting specified requirements. The bill requires a *statewide* Purple Alert be issued only when an identifiable vehicle is involved. The Florida Department of Law Enforcement will issue statewide alerts that include activation of dynamic messaging signs and lottery terminals, and notifications to subscribers.

If no identifiable vehicle is involved, dissemination of the alert will be limited to local distribution in the area where the person may be reasonably located. Local law enforcement would still be responsible for entering the case into the Florida Crime Information Center, notifying local media, informing all on-duty law enforcement officers, and alerting all law enforcement agencies having jurisdiction.

The bill does not have a fiscal impact on state government. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

In 2021,[1] the Legislature created the Purple Alert to aide in the search for certain missing adults:[2]

- Who have a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an intellectual disability or a developmental disability, a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;
- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local law enforcement agency;
- Who cannot be returned to safety without law enforcement intervention; and
- Who do not meet the criteria for activation of a local or statewide Silver Alert.[3]

Florida's Purple Alert law requires the Florida Department of Law Enforcement (FDLE), in cooperation with the Florida Department of Transportation (FDOT), the Department of Highway Safety and Motor Vehicles (DHSMV), the Department of the Lottery, and local law enforcement agencies, to establish and implement the Purple Alert. At a minimum, the Purple Alert must:

- Be the only viable means by which the missing adult is likely to be returned to safety;
- Provide, to the greatest extent possible, for the protection of the privacy, dignity, and independence of the missing adult by including standards aimed at safeguarding these civil liberties by preventing the inadvertent or unnecessary broadcasting or dissemination of sensitive health and diagnostic information;
- Limit the broadcasting and dissemination of alerts and related information to the geographic areas where the missing adult could reasonably be, considering his or her circumstances and physical and mental condition, the potential modes of transportation available to him or her or suspected to be involved, and the known or suspected circumstances of his or her disappearance; and
- Be activated only when there is sufficient descriptive information about the missing adult and the circumstances surrounding his or her disappearance to indicate that activating the alert is likely to help locate the missing adult.[4]

When a vehicle is involved in a Purple Alert, FDLE's Missing Endangered Persons Information Clearinghouse (MEPIC) notifies FDOT and DHSMV's Florida Highway Patrol to activate dynamic message signs on the highways. The Department of the Lottery is also notified and includes the missing person flyer on its retail machines. These steps are not taken if there is not a vehicle description, nor is the alert posted to FDLE's social media. For an on foot missing person

[1] Chapter 2021-93, Laws of Fla.
[2] Section 937.0201(2), F.S., defines the term "missing adult" to mean a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.
[3] The criteria for a Silver Alert is that the person must be 60 years and older; or, The person must be 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that the use of dynamic message signs may be the only possible way to rescue the missing person. The missing person must have an irreversible deterioration of intellectual faculties (e.g. Alzheimer's disease or dementia) that has been verified by law enforcement. Florida Department of Law Enforcement (FDLE), *Silver Alert*, https://www.fdle.state.fl.us/AMBER-Plan/Silver-Alert (last visited January 4, 2024).
[4] Section 937.0205(3), F.S.

under a Purple alert, FDLE issues a statewide be on the lookout (BOLO) and public notification is sent to subscribers, regardless of the subscriber's location.[5]

Florida's Purple Alerts began on July 1, 2022. As of November 30, 2023, 331 Purple Alerts have been issued. Of those 100 (30 percent) involved individuals in a vehicle, and 231 (70 percent) involved individuals on foot.[6]

According to FDLE, public engagement is paramount to the effectiveness of alert programs. The carefully vetted and precisely defined criteria for issuing other existing alerts are in place to most effectively locate and protect those missing endangered individuals. Increasing the number and frequency of alerts by issuing them statewide for those not in a vehicle is likely to desensitize the public and may decrease the perceived gravity and actual effectiveness of all alerts including emergency weather, AMBER,[7] Silver, and Missing Child[8] Alerts.[9]

III. Effect of Proposed Changes:

The bill amends s. 937.0205, F.S., to authorize the issuance of a statewide Purple Alert *only* when an identifiable vehicle is involved in the case of a missing adult. In such instances, FDLE will issue statewide alerts, including activation of lottery terminals, dynamic message signs on state highways, and notifications to subscribers.

For an alert with no identifiable vehicle involved, the bill limits disseminating Purple Alerts to the local area where the missing person may reasonably be located. In such instances, law enforcement agencies must comply with s. 937.021, F.S., including entry into the Florida Crime Information Center (FCIC), notification of local media, informing all on-duty law enforcement of the missing adult report, and communicating the report to every law enforcement agency having jurisdiction.

FDLE asserts this change will better align the Purple Alert Plan with the existing Silver Alert Plan. Additionally, issuing statewide Purple Alerts only when a vehicle is involved will allow for addressing only those who may reasonably reach multiple jurisdictions.

The bill reiterates that statewide Purple Alert process must include monitoring the use, activation, and results of alerts and a strategy for informing and educating law enforcement, the media, and stakeholders concerning the alert.

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[5] FDLE, Agency Analysis of 2024 Senate Bill 640, p.2. December 12, 2023. (On file with Senate Committee on Transportation).
[6] *Id.* at 5.
[7] AMBER alerts are issued for missing children under the age of 18 where law enforcement has a well-founded belief that a kidnapping has occurred, that the child is in imminent danger of death or serious bodily injury, here is a detailed description of the child and or the abductor/vehicle to broadcast the public, and the law enforcement agency of jurisdiction recommends activation. FDLE, *Florida AMBER Alert*, https://www.fdle.state.fl.us/Amber-Plan/Amber-Alert (last visited December 15, 2023).
[8] Missing Child Alerts are issued if the child is under the age of 18, law enforcement has a well-founded belief that the child is in danger of death or serious bodily injury, there is a detailed description or photograph of the child to broadcast to the public, and the local law enforcement agency of jurisdiction recommends activation. FDLE, *Missing Child Alert*, https://www.fdle.state.fl.us/AMBER-Plan/Missing-Child-Alert (last visited January, 4 2024).
[9] *Supra* note 5 at 5.

The bill takes effect July 1, 2024.

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.

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:

This bill substantially amends section 937.0205 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 Transportation on January 17, 2024:
The committee substitute clarifies that a state Purple Alert may be requested from, instead of requested by, the Department of Law Enforcement.

B. Amendments:

By the Committee on Transportation; and Senator Berman

596-02182-24 2024640c1

A bill to be entitled

An act relating to the Purple Alert; amending s. 937.0205, F.S.; requiring local law enforcement agencies to develop policies for a local activation of a Purple Alert for certain missing adults; specifying requirements for such policies; specifying duties of the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse in the event of a state Purple Alert; specifying conditions under which a local law enforcement agency may request the clearinghouse to open a case; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 937.0205, Florida Statutes, is amended to read:

937.0205 Purple Alert.—

(1) The Legislature finds that a standardized state system is necessary to aid in the search for a missing adult identified in subsection (4) ~~paragraph (4)(a)~~. The Legislature also finds that a coordinated local law enforcement and state agency response with prompt and widespread sharing of information will improve the chances of finding the person.

(2) It is the intent of the Legislature to establish the Purple Alert, to be implemented in a manner that, to the extent practicable, safeguards the privacy rights and related health and diagnostic information of such missing adults.

(3) The Department of Law Enforcement, in cooperation with

596-02182-24 2024640c1

the Department of Transportation, the Department of Highway Safety and Motor Vehicles, the Department of the Lottery, and local law enforcement agencies, shall establish and implement the Purple Alert. At a minimum, the Purple Alert must:

(a) Be the only viable means by which the missing adult is likely to be returned to safety;

(b) Provide, to the greatest extent possible, for the protection of the privacy, dignity, and independence of the missing adult by including standards aimed at safeguarding these civil liberties by preventing the inadvertent or unnecessary broadcasting or dissemination of sensitive health and diagnostic information;

(c) Limit the broadcasting and dissemination of alerts and related information to the geographic areas where the missing adult could reasonably be, considering his or her circumstances and physical and mental condition, the potential modes of transportation available to him or her or suspected to be involved, and the known or suspected circumstances of his or her disappearance; and

(d) Be activated only when there is sufficient descriptive information about the missing adult and the circumstances surrounding his or her disappearance to indicate that activating the alert is likely to help locate the missing adult.

(4)~~(a)~~ Under a Purple Alert, ~~a local law enforcement agency may broadcast to the media and to persons who subscribe to receive alert notifications under this section information concerning~~ a missing adult is deemed to be an adult:

(a)~~1.~~ Who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an

intellectual disability or a developmental disability, as those terms are defined in s. 393.063; a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;

(b) ~~2.~~ Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local law enforcement agency;

(c) ~~3.~~ Who cannot be returned to safety without law enforcement intervention; and

(d) ~~4.~~ Who does not meet the criteria for activation of a local Silver Alert or the Silver Alert Plan of the Department of Law Enforcement.

(5) For a missing adult on foot or in an unidentified vehicle, local law enforcement agencies shall develop their own policies for activation of a local Purple Alert that meets the requirements set forth in s. 937.021 and shall:

(a) Contact media outlets in the affected area or surrounding jurisdictions;

(b) Inform all on-duty law enforcement officers of the missing adult report; and

(c) Communicate the report to any other law enforcement agency in the county of jurisdiction.

(6) A state Purple Alert may be requested from the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse when the investigation indicates that there is a motor vehicle with an identified license plate or other vehicle information. The clearinghouse shall:

(a) Coordinate with the Department of Transportation and the Department of Highway Safety and Motor Vehicles for the

activation of dynamic message signs on state highways and the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert;

(b) Coordinate with the Department of the Lottery to have the state Purple Alert broadcast on lottery terminals, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets; and

(c) Notify subscribers.

(7) If a local or state Purple Alert is determined to be necessary and appropriate, the local law enforcement agency having jurisdiction may also request that a case be opened with the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse.

~~(b) If a Purple Alert is determined to be necessary and appropriate, the local law enforcement agency having jurisdiction must notify the media and subscribers in the jurisdiction or jurisdictions where the missing adult is believed to or may be located. The local law enforcement agency having jurisdiction may also request that the Purple Alert notification be broadcast on lottery terminals within the geographic regions where the missing adult may reasonably be, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets.~~

~~(c) Under the Purple Alert, the local law enforcement agency having jurisdiction may also request that a case be opened with the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse. To enhance local or regional efforts when the investigation indicates that an identifiable vehicle is involved, the clearinghouse must~~

~~coordinate with the Department of Transportation and the Department of Highway Safety and Motor Vehicles for the activation of dynamic message signs on state highways and the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert.~~

(8)~~(5)~~ The state Purple Alert process must include procedures to monitor the use, activation, and results of alerts and a strategy for informing and educating law enforcement, the media, and other stakeholders concerning the alert.

(9)~~(6)~~ The Department of Law Enforcement may adopt rules to implement and administer this section.

Section 2. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

SB 640
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bobbie Smith

Phone 850-251-6392

Address 2331 Phillips Road
Street

Email bobbiesmith@fdle.state.fl.us

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 Department of Law Enforcement

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 676
INTRODUCER:	Regulated Industries Committee and Senator Bradley
SUBJECT:	Food Delivery Platforms
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Davis	Betta	AEG	**Favorable**
3.	Oxamendi	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 676 provides for the regulation of food delivery platforms. The bill defines the term "food delivery platform" to mean a business that acts as a third-party intermediary for the consumer by taking and arranging for the delivery or pickup of orders from multiple food service establishments. The bill does not apply to delivery or pickup orders placed directly with, and fulfilled by, a food service establishment. The bill defines the term "food service establishment" to have the same meaning as the term "public food service establishment," as defined in s. 509.013(5), F.S.

The bill prohibits a food delivery platform from taking and arranging for the delivery or pickup of orders from a food service establishment without the express consent of that food service establishment. The food service establishment's consent must be in either a written or electronic format.

Under the bill, a food delivery platform must itemize and clearly disclose to the consumer the cost breakdown of each transaction. The food delivery platform must provide the consumer with information about the delivery, including the anticipated date and time of the delivery of the order.

By July 1, 2025, the bill requires a food delivery platform to provide a food service establishment with a method of contacting the consumer while the order is prepared and being

delivered for up to two hours after the order is picked up from the food service establishment for delivery to the consumer and a method for responding to a consumer's ratings or reviews.

The bill requires a food delivery platform to remove a food service establishment's listing on the food delivery platform within 10 days after receiving the food service establishment's request for removal, unless there is an existing agreement between the two parties stating otherwise as provided in the bill. Under the bill, a food delivery platform may not, without an agreement with the food service establishment, intentionally inflate, decrease, or alter a food service establishment's pricing.

The bill specifies the requirements for the agreement between a food delivery platform and a food service establishment, including clearly stating all fees, commissions, and charges that the food service establishment is expected to pay or absorb, policies related to alcoholic beverages, insurance requirements, the collection and remitting of taxes, and how disputes will be resolved.

The agreement between the food delivery platform and the food service establishment may not include a provision that requires a food service establishment to indemnify the food delivery platform, or any employee, contractor, or agent of the food delivery platform, for any damage or harm caused by the acts or omissions of the food delivery platform or any of its employees, contractors, or agents. A food delivery platform may also not unreasonably limit the value or number of transactions that may be disputed by a food service establishment with respect to orders, goods, or delivery errors for determining responsibility for errors and reconciling disputed transactions.

The bill authorizes the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) to enforce the provisions in the bill by issuing cease and desist orders upon a finding of probable cause that there is a violation and seeking an injunction or writ of mandamus against persons who violate the notice to cease and desist. The bill authorizes the division to issue a civil penalty of not more than $1,000 per offense for each violation and provides that the division is entitled to attorney fees and costs if it is required seek enforcement of a notice for a penalty under the Administrative Procedures Act.

The bill expressly preempts the regulation of food delivery platforms to the state.

This bill has a significant fiscal impact on the DBPR. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Division of Hotels and Restaurants

The division is charged with enforcing the laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.[1]

[1] Section 509.032, F.S.

Public Food Service Establishments

A "public food service establishment" is defined as:

> …any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.[2]

There are several exclusions from the definition of public food service establishment, including:

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests;
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests;
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;
- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.[3]

The regulation of public food service establishments is preempted to the state.[4]

Off-premises Options for Public Food Establishments

Due to the loss of business during the coronavirus pandemic, many public food establishments added new off-premises food options. The most common addition was curbside takeout by 67 percent of operators nationwide according to the National Restaurant Association.[5] Twenty-seven percent of the operators added food delivery by third party food delivery platforms and an additional 17 percent added in-house delivery options.[6] Food delivery platforms are third-party ordering apps that pick up and deliver food from public food service establishments for a fee.[7]

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[2] Section 509.013(5)(a), F.S.
[3] Section 509.013(5)(b), F.S.
[4] Section 509.032(7), F.S.
[5] *Consumers respond to new off-premise options at restaurants*, September 17, 2020, available at https://restaurant.org/education-and-resources/resource-library/consumers-respond-to-new-off-premises-options-at-restaurants/ (last visited January 16, 2024).
[6] *Id.*
[7] *See* https://cloudkitchens.com/blog/top-food-delivery-apps/ (last visited January 24, 2024).

Regulation of Food Delivery Platforms

Food delivery platforms, which are third-party providers who, for a fee, deliver food orders from public food service establishments to the consumer are not regulated by the State of Florida.

United State Food and Drug Administration (FDA), in coordination with the U.S. Department of Agriculture and the Centers for Disease Control and Prevention, have developed best practices recommendations for the safe delivery of food, including when ordering food from online retailers, produce and meal-kit subscription services, ghost kitchens (which only prepare and fulfill orders for delivery, without a physical storefront), and third-party delivery services and programs.[8]

A proposed ordinance in Miami-Dade County would regulate food delivery platforms.[9] The proposed ordinance would require the food delivery service to itemize and clearly disclose the cost breakdown of each transaction. The proposed ordinance would permit public food service establishments to access the information about the customers who place orders for their food through a third-party food delivery application, including the consumer's name and address. It also would bar the food delivery service prohibiting a food delivery platform from restricting a public food service establishment from marketing to or contacting a customer under certain circumstances. This appears to be the first local ordinance of its kind in the United States.[10] However, the Board of County Commissioners has deferred action on this proposed ordinance.[11]

III. Effect of Proposed Changes:

The bill creates s. 509.103, F.S., to regulate food delivery platforms.

The bill defines the term "food delivery platform" to mean a business that acts as a third-party intermediary for the consumer by taking and arranging for the delivery or pickup of orders from multiple food service establishments. The bill exempts the following types of activities from the term:

- Delivery or pickup orders placed directly with, and fulfilled by, a food service establishment.
- Websites, mobile applications, or other electronic services that do not post food service establishment menus, logos, or pricing information on their platforms.

The bill defines the term "food service establishment" to have the same meaning as the term "public food service establishment" as defined in s. 509.013(5), F.S. It also defines the term

[8] U.S. Food and Drug Administration, *FDA Highlights Best Practices on Food Safety for Online Delivery Services*, Dec. 9, 2022, available at: https://www.fda.gov/food/cfsan-constituent-updates/fda-highlights-best-practices-food-safety-online-delivery-services (last visited Jan. 24,2024).
[9] *See Memorandum to Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners*, Sept. 11, 2023, available at: https://www.miamidade.gov/govaction/legistarfiles/Matters/Y2023/231055.pdf (last visited Jan. 24, 2024).
[10] Jesse Scheckner, *Miami-Dade sets table for food delivery app regulations amid privacy concerns*, Aug. 29, 2323, available at: https://floridapolitics.com/archives/631690-miami-dade-sets-table-for-food-delivery-app-regulations-amid-privacy-concerns/ (last visited Jan. 24, 2024).
[11] *See* Miami-Dade Legislative Item File Number: 231055, at: https://www.miamidade.gov/govaction/matter.asp?matter=231055&file=true&fileAnalysis=false&yearFolder=Y2023 (last visited Jan. 24, 2024).

"purchase price" to mean the price, as listed on the menu, for the items in a consumer's order. The term does not include fees, tips or gratuities, and taxes.

The bill prohibits a food delivery platform from taking and arranging for the delivery or pickup of orders from a food service establishment without the express consent of that food service establishment. The food service establishment's consent must be in either a written or electronic format.

Under the bill, a food delivery platform must itemize and clearly disclose to the consumer the cost breakdown of each transaction, including, but not limited to, the following information:

- The purchase price of the food and beverage.
- Any commission, delivery fee, or promotional fee charged to the consumer by the food delivery platform.
- Any tip or gratuity.
- Any taxes due on the transaction.

In addition, a food delivery platform must clearly provide to the consumer:

- The anticipated date and time of the delivery of the order.
- The delivery address.
- Confirmation that the order has been successfully delivered or completed.
- A mechanism for the consumer to express order concerns directly to the food delivery platform.

By July 1, 2025, the bill requires a food delivery platform to provide a food service establishment with:

- A method of contacting the consumer while the order is prepared and being delivered for up to two hours after the order is picked up from the food service establishment for delivery to the consumer.
- A method for responding to a consumer's ratings or reviews.

The bill requires a food delivery platform to remove a food service establishment's listing on the food delivery platform within 10 days after receiving the food service establishment's request for removal, unless there is an existing agreement between the two parties stating otherwise as provided in the bill.

Under the bill, a food delivery platform may not, without an agreement with the food service establishment, intentionally inflate, decrease, or alter a food service establishment's pricing.

The bill requires that the agreement between a food delivery platform and a food service establishment:

- Clearly state all fees, commissions, and charges that the food service establishment is expected to pay or absorb.
- Clearly state the policies of the food delivery platform, including, but not limited to, policies related to alcoholic beverages, marketing, menus and pricing, payment, and prohibited conduct.

- Include the insurance requirements for delivery partners of the food delivery platform and identify the party responsible for the cost of such insurance.
- Identify the party responsible for collecting and remitting applicable sales taxes.
- Clearly disclose policies regarding disputed transactions and the procedure for resolving those disputes.

The agreement between the food delivery platform and the food service establishment may not include a provision that requires a food service establishment to indemnify the food delivery platform, or any employee, contractor, or agent of the food delivery platform, for any damage or harm caused by the acts or omissions of the food delivery platform or any of its employees, contractors, or agents.

A food delivery platform may also not unreasonably limit the value or number of transactions that may be disputed by a food service establishment with respect to orders, goods, or delivery errors for determining responsibility for errors and reconciling disputed transactions.

The bill authorizes the division to enforce the provisions in the bill by:
- Authorizing the division to issue a cease and desist order upon a finding of probable cause that there is a violation;
- Providing that the division's issuance of a cease and desist order is not subject to Administrative Procedures Act requirements for agency actions which affect substantial interests, including a hearing before the Division of Administrative Hearing;
- Authorizing the division to seek an injunction or writ of mandamus against persons who violate the notice to cease and desist;
- Providing that the division is entitled to attorney fees and costs if it is required seek enforcement of a notice for a penalty under the Administrative Procedures Act;
- Authorizing the division to issue a civil penalty that may not exceed $1,000 per offense for each violation, and that the division may regard as a separate offense each day or portion of a day in which there has been a violation of the provision in the bill or of a the rules of the division; and
- Requiring the division to allow food delivery platforms seven business days to cure a violation before issuing a notice to cease or desist, an injunction, or a writ of mandamus or imposing a civil penalty.

The bill expressly preempts the regulation of food delivery platforms to the state.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

Food delivery platforms may incur costs associated with the requirements of this bill.

C. Government Sector Impact:

The DBPR states it will incur additional expenses related to the number of full-time employees (FTE) required to handle the workload needed to implement the bill. The DBPR estimates it will need three additional staff and associated costs of $309,705 ($187,495 Hotels and Restaurant Trust Fund and $122,210 Administrative Trust Fund) for Fiscal Year 2024-2025.[12]

According to DBPR, the bill is unclear if the division would need to create a new license classification or online registration for food delivery platforms to allow regulation and enforcement. However, the DBPR is also expected to incur some nonrecurring costs to configure changes to DBPR's licensing system. According to the DBPR, the system modifications can be made with existing resources.[13]

The bill may result in an indeterminate increase in fines collected by the division due to noncompliance.

VI. Technical Deficiencies:

None.

[12] *See* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for CS/SB 676* at 8 (January 22, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).
[13] *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 509.103 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 Regulated Industries on January 22, 2024:
The committee substitute authorizes the division to enforce the provisions in the bill by issuing cease and desist orders upon a finding of probable cause that there is a violation and seeking an injunction or writ of mandamus against persons who violate the notice to cease and desist. The bill authorizes the division to issue a civil penalty of not more than $1,000 per offense for each violation and provides that the division is entitled to attorney fees and costs if it is required seek enforcement of a notice for a penalty under the Administrative Procedures Act.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Bradley

580-02345-24 2024676c1

A bill to be entitled

An act relating to food delivery platforms; creating s. 509.103, F.S.; defining terms; prohibiting food delivery platforms from taking or arranging for the delivery or pickup of orders from a food service establishment without the food service establishment's consent; requiring food delivery platforms to disclose certain information to the consumer; requiring food delivery platforms to provide food service establishments with a method of contacting and responding to consumers by a specified date; providing circumstances under which a food delivery platform must remove a food service establishment's listing on its platform; prohibiting certain actions by food delivery platforms; providing requirements for agreements between food delivery platforms and food service establishments; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue a notice to cease and desist to a food delivery platform for violations; providing that such notice does not constitute agency action; authorizing the division to enforce such notice and collect attorney fees and costs under certain circumstances; authorizing the division to impose a specified civil penalty; requiring the division to allow a food delivery platform to cure any violation within a specified timeframe before imposing such a civil penalty; preempting regulation of food delivery platforms to the state; providing an

580-02345-24 2024676c1

effective date.

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

Section 1. Section 509.103, Florida Statutes, is created to read:

509.103 Food delivery platforms.—

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

(a) "Food delivery platform" means a business that acts as a third-party intermediary for the consumer by taking and arranging for the delivery or pickup of orders from multiple food service establishments. The term does not include:

1. Delivery or pickup orders placed directly with, and fulfilled by, a food service establishment.

2. Websites, mobile applications, or other electronic services that do not post food service establishment menus, logos, or pricing information on their platforms.

(b) "Food service establishment" has the same meaning as the term "public food service establishment" as defined in s. 509.013(5).

(c) "Purchase price" means the price, as listed on the menu, for the items in a consumer's order, excluding fees, tips or gratuities, and taxes.

(2) A food delivery platform may not take and arrange for the delivery or pickup of orders from a food service establishment without the express consent of that food service establishment. Such consent must be in either a written or electronic format.

(3) A food delivery platform shall itemize and clearly

disclose to the consumer the cost breakdown of each transaction, including, but not limited to, the following information:

(a) The purchase price of the food and beverage.

(b) Any commission, delivery fee, or promotional fee charged to the consumer by the food delivery platform.

(c) Any tip or gratuity.

(d) Any taxes due on the transaction.

(4) A food delivery platform shall clearly provide to the consumer:

(a) The anticipated date and time of the delivery of the order.

(b) The address to which the order will be delivered.

(c) Confirmation that the order has been successfully delivered or that the delivery cannot be completed.

(d) A mechanism for the consumer to express order concerns directly to the food delivery platform.

(5) By July 1, 2025, a food delivery platform shall provide a food service establishment with:

(a) A method of contacting the consumer while preparing the order, during delivery of the order, and for up to 2 hours after the order is picked up from the food service establishment for delivery to the consumer.

(b) A method to respond to ratings or reviews that are left by the consumer.

(6) A food delivery platform shall remove a food service establishment's listing on the food delivery platform within 10 days after receiving the food service establishment's request for removal, unless there is an existing agreement between the two parties which includes the provisions specified in

subsection (8) stating otherwise.

(7) A food delivery platform may not, without an agreement with the food service establishment, intentionally inflate, decrease, or alter a food service establishment's pricing.

(8) An agreement between a food delivery platform and a food service establishment must:

(a) Clearly state all fees, commissions, and charges that the food service establishment is expected to pay or absorb.

(b) Clearly state the policies of the food delivery platform, including, but not limited to, policies related to alcoholic beverages, marketing, menus and pricing, payment, and prohibited conduct.

(c) Include the insurance requirements for delivery partners of the food delivery platform and identify the party responsible for the cost of such insurance.

(d) Identify the party responsible for collecting and remitting applicable sales taxes.

(e) Clearly disclose policies regarding disputed transactions and the procedure for resolving those disputes.

An agreement may not include a provision that requires a food service establishment to indemnify the food delivery platform, or any employee, contractor, or agent of the food delivery platform, for any damage or harm caused by the acts or omissions of the food delivery platform or any of its employees, contractors, or agents.

(9) A food delivery platform may not unreasonably limit the value or number of transactions that may be disputed by a food service establishment with respect to orders, goods, or delivery

errors for determining responsibility for errors and reconciling disputed transactions.

(10) If the division has probable cause to believe that a food delivery platform has violated this section or any rule adopted pursuant to this section, the division may issue to the food delivery platform a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it is entitled to collect attorney fees and costs, together with any cost of collection.

(11) The division may impose a civil penalty on a food delivery platform in an amount not to exceed $1,000 per offense for each violation of this section or of a division rule. For purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which there has been a violation of this section or rules of the division. The division shall issue to the food delivery platform a written notice of any violation and provide the food delivery platform 7 business days in which to cure the violation before imposing a civil penalty under this subsection or commencing any legal proceeding under subsection (10).

(12) Regulation of food delivery platforms is expressly preempted to the state.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/24
Meeting Date

Fiscal Policy
Committee

676
Bill Number or Topic

Amendment Barcode (if applicable)

Name Samantha Padgett

Phone 850-224-2250

Address 230 S. Adams St.
Street

Email spadgett@frla.org

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 Restaurant & Lodging

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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02/15/2024
Meeting Date

Fiscal Policy
Committee

SB 676
Bill Number or Topic

Amendment Barcode (if applicable)

Name Giovanni Castro

Phone 305 978.4853

Address 161 NW 6 St
Street

Email

Miami FL 33128
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:
UBER

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate

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2/15/24
Meeting Date

Fiscal Policy
Committee

SB 676
Bill Number or Topic

Amendment Barcode (if applicable)

Name Gerard O'Rourke

Phone

Address
Street

Email gerard@conversepublic.com

City State Zip

Reset Form

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: Digital Restaurant 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/16/24
Meeting Date

Fiscal Policy
Committee

SB 676
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tiffany Garling

Phone 850 661 3339

Address 136 Branaugh
Street

Email tgarling@flchamber.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:
FL Chamber

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2.15.24
Meeting Date

Fiscal Policy
Committee

676
Bill Number or Topic

Amendment Barcode (if applicable)

Name Sarah Suskey

Phone 850.222.8900

Address 204 S. Monroe St
Street
Tallahassee FL 32301
City State Zip

Email SarahC@tapfla.com

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:
TechNet

☐ 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. 2020-2022JointRules.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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2/15/2024
Meeting Date

Fiscal Policy
Committee

SB 676
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jorge Chamizo

Phone 850-681-0024

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Street

Email jorge@flapartners.com

Tallahassee FL 32302
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:
Uber Technologies

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

2/15/24
Meeting Date

Fiscal Policy
Committee

The Florida Senate

APPEARANCE RECORD

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676
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Black

Phone 8505098022

Address 1727 Highland Place
Street

Email greg@blackconsultingllc.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:
Grub Hub

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

676
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Adam Basford

Job Title _____

Address 516 N Adams St
Street

Phone _____

Tallahassee FL 32301
City *State* *Zip*

Email abasford@aif.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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 Fiscal Policy

BILL:	CS/CS/CS/SB 738
INTRODUCER:	Fiscal Policy Committee; Judiciary Committee; Environmental and Natural Resources Committee; and Senator Burgess
SUBJECT:	Environmental Management
DATE:	February 16, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	**Fav/CS**
2.	Collazo	Cibula	JU	**Fav/CS**
3.	Barriero	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 738 requires the side slopes of nonindustrial stormwater management systems, in or adjacent to residential or urban areas that are accessible to the general public, to be designed with a horizontal-to-vertical ratio no steeper than 4:1 to a depth of at least two feet below the control elevation and be stabilized with vegetation. The bill provides an exception if the slope incorporates erosion and sediment control best management practices and is fenced, greenscaped, or has other barriers installed to prevent accidental incursion into the system. The bill supersedes all side slope rules that have been adopted by DEP, WMDs, or delegated programs as of July 1, 2024.

In addition, the bill clarifies that causes of action under the Water Quality Assurance Act must be limited to damages to real or personal property directly resulting from pollution that was not authorized by any government approval or permit. The bill provides that the strict liability exceptions to such causes of action include those specified in s. 376.82, F.S., regarding the rehabilitation of a brownfields site.

II. Present Situation:

Stormwater Runoff

Nationwide, polluted stormwater runoff is considered to be the greatest threat to clean water.[1] More than 40 percent of waters assessed by the states are too polluted for fishing or swimming.[2] Nonpoint sources associated with stormwater account for more than 40 percent of these polluted waters.[3] Conversely, traditional point sources (*i.e.*, wastewater treatment plants) account for only about 10 percent of these polluted or "impaired" waters.[4] Hundreds of impaired water segments in Florida have lost their designated use due, in part, to stormwater pollution.[5]

Florida averages 40-60 inches of rainfall a year, depending on the location, with about two-thirds falling between June and October.[6] Stormwater runoff generated during these rain events flows over land or impervious surfaces, such as paved streets, parking lots, driveways, sidewalks, and rooftops, and picks up pollutants like trash, chemicals, oils, and sediment along the way. This unfiltered water ends up in streams, ponds, lakes, bays, wetlands, oceans, and ground water. Construction sites, lawns, improperly stored hazardous wastes, and illegal dumping are all potential sources of stormwater pollutants.[7]

Stormwater runoff can cause a multitude of problems:

- Excess nutrients, primarily nitrogen and phosphorus from lawn fertilizers or natural sources, such as manure, can cause algal and bacterial blooms that proliferate rapidly. Algae will consume oxygen, increase turbidity in the waterbody, and eventually die along with the fish and other aquatic life that need oxygen to live.[8]
- Pathogenic bacteria and microorganisms can be carried by stormwater into a waterbody. This creates health hazards and can cause lakes and beaches to close to the public.[9]
- Sediment can increase the turbidity (a measure of water cloudiness) of a waterbody. Turbidity can block sunlight from reaching aquatic plants, making it impossible for them to grow. Without plants, animals lose a food source, and it is more difficult to filter pollutants

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[1] South Florida Water Management District (SFWMD), *Your Impact on the Environment*, https://www.sfwmd.gov/community-residents/what-can-you-do (last visited Jan. 23, 2024).
[2] Department of Environmental Protection (DEP), *Stormwater Support*, https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support (last visited Jan. 23, 2024). A recent study examining water quality across the U.S. shows Florida ranks first in the nation for total acres of lakes classified as impaired for swimming and aquatic life (873,340 acres), and second for total lake acres listed as impaired for any use (935,808 acres). Environmental Integrity Project, *The Clean Water Act at 50*, 28 (2022), available at https://environmentalintegrity.org/wp-content/uploads/2022/03/CWA@50-report-3-17-22.pdf. Florida also has the second most total square miles of impaired estuaries (2,533 square miles). *Id.* at 29.
[3] DEP, *Stormwater Support*, https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support (last visited Jan. 23, 2024).
[4] *Id.*
[5] *Id.*
[6] Meijing Zhang et al., *Florida Rainfall Data Sources and Types*, University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), 1 (Oct. 9, 2023), available at https://edis.ifas.ufl.edu/publication/AE517.
[7] U.S. Environmental Protection Agency (EPA), *Urbanization and Stormwater Runoff*, https://www.epa.gov/sourcewaterprotection/urbanization-and-stormwater-runoff (last visited Jan. 23, 2024).
[8] Southwest Florida Water Management District (SWFWMD), *Stormwater Runoff*, https://www.swfwmd.state.fl.us/residents/education/kids/stormwater-runoff (last visited Jan. 23, 2024).
[9] *Id.*

from the water. Instead, pollutants collect at the bottom of the waterbody and remain there indefinitely.[10]

- Debris such as plastic bags, bottles, and cigarette butts can wash into a waterbody and interfere with aquatic life[11] and flood prevention and decrease water quality. When a stormwater drain gets clogged with debris, rainwater that normally would be collected cannot enter into the drainage system. Water will accumulate around the drain, causing flooded sidewalks or streets and increase the chances for flooding buildings.[12]
- Other hazardous wastes, such as insecticides, herbicides, paint, motor oil, and heavy metals, can be carried by stormwater runoff to waterbodies and cause illness to aquatic life and humans alike.[13]

In addition, inadequate stormwater management increases stormwater flows and velocities, contributes to erosion, overtaxes the carrying capacity of streams and other conveyances, reduces ground water recharge, threatens public health and safety, and is the primary source of pollutant loading entering Florida's rivers, lakes, and estuaries.[14]

Stormwater Management Systems

Stormwater management systems are engineered structures and strategies designed to control and mitigate the effects of stormwater runoff. There are many types of stormwater management systems, including constructed wetlands, bioswales, and stormwater ponds. Stormwater ponds are defined as either retention or detention ponds. Retention ponds retain all the water within them, allowing the water to percolate into the soil and preventing it from moving to other surface waters. In contrast, detention ponds capture stormwater runoff and temporarily store it before slowly releasing the water downstream.[15]

While a best management practice for pollutant removal, stormwater ponds may create safety hazards, including the risk of drowning.[16] Steep sides and slippery slopes can make it difficult for a person to climb back out if they happen to fall in.[17] In addition, retention ponds are often deep because they are designed for maximum rainwater collection.[18] Strong currents at inlet and outlet areas of a pond can also pose a danger.[19]

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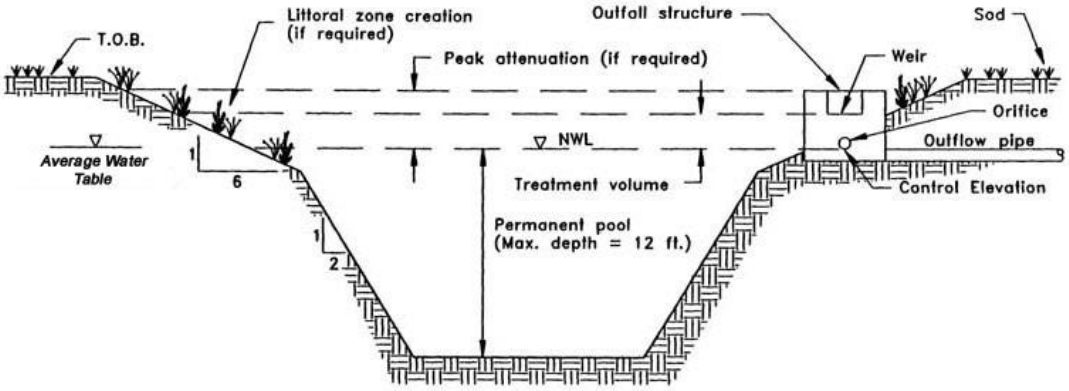
[10] *Id.*
[11] *Id.*
[12] SFWMD, *Your Impact on the Environment*, https://www.sfwmd.gov/community-residents/what-can-you-do (last visited Jan. 23, 2024).
[13] SWFWMD, *Stormwater Runoff*, https://www.swfwmd.state.fl.us/residents/education/kids/stormwater-runoff (last visited Jan. 23, 2024).
[14] Fla. Admin. Code R. 62-40.431(2)(b).
[15] DEP, *Stormwater Management*, available at https://floridadep.gov/sites/default/files/stormwater-management.pdf (last visited Jan. 23, 2024); U.S. Environmental Protection Agency (EPA), *Stormwater Management Practices at EPA Facilities*, https://www.epa.gov/greeningepa/stormwater-management-practices-epa-facilities (last visited Jan. 23, 2024).
[16] City of Jacksonville, *Retention Pond Safety*, Jun. 1, 2020, https://www.jacksonville.gov/welcome/welcome-news/retention-pond-safety; *see also* EPA, *Stormwater Best Management Practice: Wet Ponds*, 4 (2021), available at https://www.epa.gov/system/files/documents/2021-11/bmp-wet-ponds.pdf.
[17] City of Jacksonville, *Retention Pond Safety*, Jun. 1, 2020, https://www.jacksonville.gov/welcome/welcome-news/retention-pond-safety.
[18] *Id.*
[19] *Id.*

Wet Detention Ponds

Wet detention ponds are one of the most common types of detention systems and consist of constructed basins that have a permanent pool of water into which stormwater runoff is directed.[20] The runoff is detained in the pond until it is released downstream or displaced by runoff from subsequent rain events.[21] By capturing and detaining runoff, wet detention ponds control both stormwater quantity and quality.[22] Sedimentation processes remove particulates, organic matter, and metals, while dissolved metals and nutrients are removed through biological uptake.[23]



Typical wet detention system[24]

Specific designs may vary considerably, depending on site constraints, local regulations, and preferences of the designer or community.[25] However, as shown above and discussed in further detail below, the typical horizontal-to-vertical ratio for side slopes is 6:1 for littoral zones, no steeper than 4:1 to a depth of at least two feet below the control elevation, and 2:1 at greater depths. The littoral zone is that portion of a stormwater pond designed to contain rooted aquatic plants and is usually provided by extending and gently sloping the sides of the pond down to a depth of two to three feet below the normal water level or control elevation.[26] Vegetative littoral zones help stabilize the soil around the pond's edge and increase pollutant uptake.[27]

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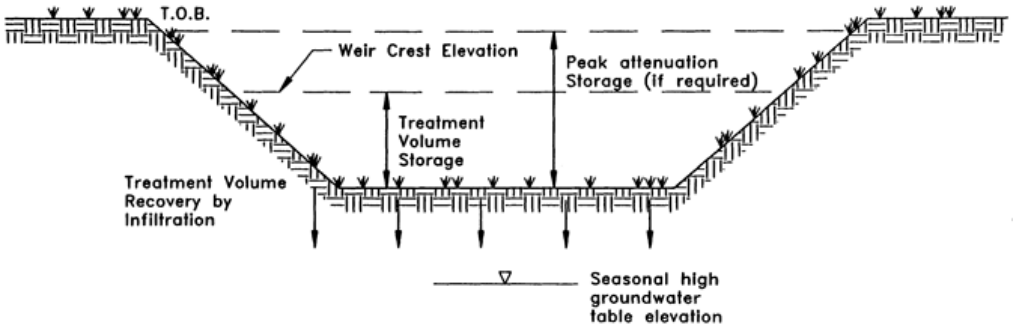
[20] EPA, *Stormwater Best Management Practice: Wet Ponds*, 1 (2021), available at https://www.epa.gov/system/files/documents/2021-11/bmp-wet-ponds.pdf.
[21] EPA, *Stormwater Technology Fact Sheet: Wet detention ponds*, 1 (1999), available at https://nepis.epa.gov/Exe/ZyPDF.cgi/200044D0.PDF?Dockey=200044D0.PDF.
[22] *Id.*
[23] *Id.*
[24] Northwest Florida Water Management District (NWFWMD), *ERP Applicant's Handbook: Vol. II*, figure 8.1-1 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03172. "T.O.B." means top of bank.
[25] EPA, *Stormwater Best Management Practice: Wet Ponds*, 2 (2021), available at https://www.epa.gov/system/files/documents/2021-11/bmp-wet-ponds.pdf.
[26] NWFWMD, *ERP Applicant's Handbook: Vol. II*, s. 12.4 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03172.
[27] EPA, *Stormwater Best Management Practice: Wet Ponds*, 3 (2021), available at https://www.epa.gov/system/files/documents/2021-11/bmp-wet-ponds.pdf.

Dry Retention Ponds

Unlike wet stormwater ponds, dry retention ponds do not have permanent pools of water or discharge to downstream surface waters. [28] Instead, these systems remain dry until filled with water during rain events.[29] Substantial amounts of suspended solids, heavy metals, bacteria, and some varieties of pesticides and nutrients such as phosphorus are removed as runoff percolates through the vegetation and soil.[30] Retention systems also promote the recharge of ground water and help prevent saltwater intrusion in coastal areas.[31]



Typical dry retention system[32]

Stormwater Management System Design Criteria

Design criteria for stormwater management systems is regulated by the Department of Environmental Protection (DEP), water management districts (WMDs), and delegated local programs. Requirements vary by type of stormwater management system and regulating authority.

In general, stormwater ponds must be designed with side slopes no steeper than a 4:1 horizontal-to-vertical ratio to a depth of at least two feet below the control elevation.[33] However, certain exceptions may apply. For example, the South Florida Water Management District (SFWMD) provides alternative criteria for golf courses,[34] while other WMDs include exceptions for fenced

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[28] NWFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.1 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03172.
[29] *Id.* Samantha T. Howley et al., *Stormwater Pond Management: What You Need to Know About Aeration*, UF/IFAS, 2 (2021), available at https://edis.ifas.ufl.edu/publication/SS695.
[30] NWFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.1 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03172.
[31] *Id.*
[32] *Id.* at s. 5.1, figure 5.1-1.
[33] *Id.* at s. 8.11; SFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.4.2(d) (2013) available at https://www.flrules.org/Gateway/reference.asp?No=Ref-02528; St. Johns River Water Management District (SJRWMD), *ERP Applicant's Handbook: Vol. II*, ss. 2.6.1 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03181; Suwannee River Water Management District (SRWMD), *ERP Applicant's Handbook: Vol. II*, s. 4.5.1 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03182; SWFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.4.1(c) (2013) available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03176.
[34] SFWMD, *ERP Applicant's Handbook: Vol. II*, s. 5.4.2(e) (2013) available at https://www.flrules.org/Gateway/reference.asp?No=Ref-02528.

ponds[35] or ponds with slopes that incorporate erosion and sediment control best management practices.[36] In addition, some WMDs require the stabilization of pond side slopes with vegetation[37] or the creation of vegetative littoral zones.[38] Where necessary, littoral zones are generally required to have slopes with a horizontal-to-vertical ratio of 6:1 or flatter.[39]

Other stormwater management systems have different requirements. For example, swales must have a top width-to-depth ratio of the cross-section equal to or greater than 6:1 or side slopes equal to or greater than a 3:1 horizontal-to-vertical ratio.[40]

DEP has proposed revisions to the stormwater rules within chapter 62-330 of the Florida Administrative Code that require legislative ratification before taking effect. The proposed revisions include some requirements for the design of stormwater ponds. For example, all side slopes and bottom areas of dry retention ponds must be seeded or sodded with water-tolerant grass species grown on sandy soils, and the permanent pool volume of wet detention ponds must meet certain parameters. [41] While the proposed rules do not include express requirements for the horizontal-to-vertical ratio of stormwater pond side slopes, they do include graphics similar to the ones shown above that depict a typical side slope ratio of 4:1 for dry retention systems, 6:1 for wet detention systems, and 2:1 for wet detention slopes below the control elevation.[42]

Water Quality Assurance Act

The Water Quality Assurance Act (Act)[43] creates a private cause of action for all damages resulting from a discharge[44] or other condition of pollution covered under the Act if the discharge was not authorized pursuant to chapter 403, F.S., regarding environmental control.[45] The Act defines "pollution" as the presence on the land or in the waters of the state of pollutants in quantities that are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or that may unreasonably interfere with the enjoyment of life or

[35] SJRWMD, *ERP Applicant's Handbook: Vol. II*, s. 2.6.1 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03181.
[36] SRWMD, *ERP Applicant's Handbook: Vol. II*, s. 4.5.1 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03182.
[37] *Id.*
[38] SJRWMD, *ERP Applicant's Handbook: Vol. II*, s. 8.6 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03181; NWFWMD, *ERP Applicant's Handbook: Vol. II*, s. 8.6 (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03172.
[39] *Id.*
[40] SJRWMD, *ERP Applicant's Handbook: Vol. II*, s. 2.1(u) (2013), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03181. This is also the statutory definition of "swale." Section 403.803(14)(a), F.S.
[41] *See* DEP, *ERP Applicant's Handbook: Vol. I*, appendices P-5 and P-6 (proposed 2023), available at https://floridadep.gov/water/engineering-hydrology-geology/documents/erp-applicants-handbook-volume-i-appendixes-rulemaking.
[42] *Id.*
[43] *See* ss. 376.30-376.317, F.S.
[44] Section 376.301(13), F.S. "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, releasing, or dumping of any pollutant or hazardous substance which occurs and which affects lands and the surface and ground waters of the state not regulated by the Water Quality Assurance Act. *Id.*
[45] Section 376.313(3), F.S. Chapter 403, F.S., relates to environmental control, including pollution control, environmental regulation, water supply and water treatment plants, among other things.

property, including outdoor recreation.[46] "Pollutants" includes any commodity made from oil or gas, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.[47]

The Act imposes strict liability, meaning it is not necessary to show negligence; it is only necessary to show the prohibited discharge or other pollutive condition occurred.[48] The Act allows for joint and several liability and provides that the only defenses to such causes of action are those specified in s. 376.308, F.S.:[49] an act of war, an act of government,[50] an act of God,[51] or an act or omission of a third party.[52]

However, the Act does not define the term "damages." In a 2010 case involving a claim arising under s. 376.313(3), F.S., the Florida Supreme Court applied a definition from a different section of chapter 376, F.S., which defines damages as "the documented extent of any destruction to or loss of any real or personal property, or the documented extent…of any destruction of the environment and natural resources, including all living things except human beings, as the direct result of the discharge of a pollutant."[53] The Court held this includes economic damages, regardless of whether the plaintiff owned any real or personal property damaged by the pollution.[54] In 2019, the Court receded from the definition applied in the previous case and held the meaning of "all damages" in s. 376.313(3), F.S., includes personal injury damages.[55]

III. Effect of Proposed Changes:

Section 1 amends s. 373.4131, F.S., regarding statewide environmental resource permitting rules. The bill provides that a side slope for a nonindustrial stormwater management system, in or adjacent to residential or urban areas that are accessible to the general public, must be designed with a horizontal-to-vertical ratio no steeper than 4:1 to a depth of at least two feet below the control elevation and must be stabilized with vegetation to prevent erosion and provide for pollutant removal.

The bill provides that a side slope for a nonindustrial stormwater management system, in or adjacent to residential or urban areas that are accessible to the general public, may be designed with a steeper 4:1 horizontal-to-vertical ratio if the slope incorporates adequate temporary and

[46] Section 376.301(37), F.S.
[47] Section 376.301(36), F.S.
[48] Section 376.313(3), F.S. Certain exceptions exist for suits involving petroleum storage systems, drycleaning facilities, or wholesale supply facilities. *See Irizarry v. Orlando Utilities Commission*, 393 F. Supp. 3d 1110, 1116 (M.D. Fla. 2019) (explaining that to state a plausible claim under s. 376.313(3), F.S., a plaintiff must allege: (1) a prohibited discharge or other pollutive condition occurred; and (2) damages).
[49] Section 376.313(3), F.S. Joint and several liability generally means liability that may be apportioned among two or more parties. *See* BLACK'S LAW DICTIONARY 997 (11th ed. 2019).
[50] This includes state, federal, or local acts of government, unless the person claiming the defense is a governmental body, in which case the defense is available only as against acts by other governmental bodies. Section 376.308(2)(b), F.S.
[51] This includes only unforeseeable acts exclusively occasioned by the violence of nature without the interference of any human agency. Section 376.308(2)(c), F.S.
[52] This does not include acts or omissions by an employee or agent of the defendant or one whose act or omission occurs in connection with a contractual relationship. An exception may apply when the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier or by rail. Section 376.308(2)(d), F.S.
[53] *Curd v. Mosaic Fertilizer*, 39 So. 3d 1216, 1221 (Fla. 2010); s. 376.031(5), F.S.
[54] *Curd*, 39 So. 3d at 1222.
[55] *Charles L. Lieupo v. Simon's Trucking, Inc.*, 286 So. 3d 143, 147 (Fla. 2019).

permanent erosion and sediment control best management practices. A system designed or authorized to be steeper than 4:1 must be fenced, be greenscaped, or have other barriers installed sufficiently to prevent accidental incursion into the system.
The bill provides that all side slope rules adopted by DEP, WMDs, or delegated local programs as of July 1, 2024, are superseded by this subsection and may be repealed without further rulemaking by publication of a notice of repeal in the Florida Administrative Register and subsequent filing of a list of the rules repealed with the Department of State.

Section 2 amends s. 376.313, F.S., regarding the nonexclusiveness of remedies and individual cause of action for damages under the Water Quality Assurance Act (Act).[56] Currently, this statute permits a person to bring a cause of action in a court of competent jurisdiction for *all damages* resulting from a discharge[57] or other condition of pollution covered by the Act if the discharge was not authorized pursuant to chapter 403, F.S., regarding environmental control.[58] In 2019, the Supreme Court of Florida held that "all damages" includes personal injury damages.[59] The bill amends the statute to permit causes of action for all damages *to real or personal property* directly resulting from a discharge or other condition of pollution covered under the Act and which was not authorized by any government approval or permit issues pursuant to *chapters 373, 376,* or 403, F.S., regarding water resources, pollutant discharge prevention and removal, and environmental control, respectively.

Currently, s. 376.313(3), F.S., provides that the only defenses to strict liability causes of action under this section are those specified in s. 376.308, F.S., namely, an act of war, an act of government,[60] an act of God,[61] or an act or omission of a third party.[62] The bill changes this language to provide that the only *strict-liability exceptions* to causes of action under this section include those specified in s. 376.308, F.S. *and* s. 376.82, F.S., regarding eligibility criteria and liability protection for the successful completion of a brownfield site rehabilitation agreement.

Section 3 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[56] *See* ss. 376.30-376.317, F.S.
[57] Section 376.301(13), F.S. "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, releasing, or dumping of any pollutant or hazardous substance which occurs and which affects lands and the surface and ground waters of the state not regulated by the Water Quality Assurance Act. *Id.*
[58] Chapter 403, F.S., relates to environmental control, including pollution control, environmental regulation, water supply and water treatment plants, among other things.
[59] *Charles L. Lieupo v. Simon's Trucking, Inc.*, 286 So. 3d 143, 147 (Fla. 2019).
[60] This includes state, federal, or local acts of government, unless the person claiming the defense is a governmental body, in which case the defense is available only as against acts by other governmental bodies. Section 376.308(2)(b), F.S.
[61] This includes only unforeseeable acts exclusively occasioned by the violence of nature without the interference of any human agency. Section 376.308(2)(c), F.S.
[62] This does not include acts or omissions by an employee or agent of the defendant or one whose act or omission occurs in connection with a contractual relationship. An exception may apply when the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier or by rail. Section 376.308(2)(d), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DEP and WMDs will likely incur costs related to the permit review process required in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Environmental Protection has proposed revisions to the stormwater rules within chapter 62-330 of the Florida Administrative Code. The proposed revisions do not include express requirements for the side slopes of stormwater ponds. The water management districts have existing rules regarding the design of pond side slopes that may be superseded by this bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.4131 and 376.313.

IX. Additional Information:

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

CS/CS/CS by Fiscal Policy on February 15, 2024:

Removes the requirement that the Department of Environmental Protection and water management districts conduct a holistic review of their current coastal permitting processes and other permit programs.

CS/CS by Judiciary on January 29, 2024:

- Eliminates the provision entitling prevailing parties in challenges filed against the Department of Environmental Protection or water management district authorizations to costs and attorney fees.
- Clarifies that the side slope requirements in the bill apply to stormwater management systems that are accessible to the public, and that such systems that are authorized to be steeper than 4:1 may be greenscaped or have barriers other than fencing installed that sufficiently prevent accidental incursions.
- Extends, in connection with the holistic review of coastal permitting processes required by the bill, the time the department and each water management district has to provide the required report to the Governor and Legislature, from December 31, 2024, to December 31, 2025.

CS by Environment and Natural Resources on January 10, 2023:
The committee substitute changed the phrase "strict-liability exception defenses" to "strict-liability exceptions."

B. Amendments:

None.

399108

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
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	.	
	.	

The Committee on Fiscal Policy (Berman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 73 - 122.

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

And the title is amended as follows:

Delete lines 11 - 18.

By the Committees on Judiciary; and Environment and Natural Resources; and Senator Burgess

590-02632-24 2024738c2

A bill to be entitled

An act relating to environmental management; amending s. 373.4131, F.S.; requiring that nonindustrial stormwater management systems be designed with side slopes that meet certain minimum design requirements; providing an exception; superseding certain side slope rules; amending s. 376.313, F.S.; revising construction relating to causes of action for damages to real or personal property directly resulting from certain discharges or other conditions of pollution; providing legislative intent; requiring the department and water management districts to conduct holistic reviews of their respective agency's coastal permitting processes and permit programs; providing the scope and purpose of the reviews; requiring the department and water management districts to submit reports of their findings and proposed solutions to the Governor and the Legislature by a specified date; providing an effective date.

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

Section 1. Subsection (7) is added to section 373.4131, Florida Statutes, to read:

373.4131 Statewide environmental resource permitting rules.—

(7) A side slope for a nonindustrial stormwater management system, in or adjacent to residential or urban areas that are accessible to the general public, must be designed, except as

590-02632-24 2024738c2

provided in paragraph (a), with a horizontal-to-vertical ratio no steeper than 4:1 to a depth of at least 2 feet below the control elevation and must be stabilized with vegetation to prevent erosion and provide for pollutant removal.

(a) A side slope for a nonindustrial stormwater management system, in or adjacent to residential or urban areas that are accessible to the general public, may be designed with a steeper than 4:1 horizontal-to-vertical ratio if the slope incorporates adequate temporary and permanent erosion and sediment control best management practices. A system designed or authorized to be steeper than 4:1 must be fenced, be greenscaped, or have other barriers installed sufficiently to prevent accidental incursion into the system.

(b) All side slope rules adopted by the department, water management districts, or delegated local programs under this part as of July 1, 2024, are superseded by this subsection and may be repealed without further rulemaking pursuant to s. 120.54 by publication of a notice of repeal in the Florida Administrative Register and subsequent filing of a list of the rules repealed with the Department of State.

Section 2. Subsection (3) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.—

(3) Except as provided in s. 376.3078(3) and (11), ~~nothing contained in~~ ss. 376.30-376.317 do not prohibit a ~~prohibits any~~ person from bringing a cause of action in a court of competent jurisdiction for all damages to real or personal property directly resulting from a discharge or other condition of

pollution covered by ss. 376.30-376.317 and which was not authorized by any government approval or permit issued pursuant to chapter 373, chapter 376, or chapter 403. ~~Nothing in~~ This chapter does not ~~shall~~ prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only strict-liability exceptions ~~defenses~~ to such cause of action are ~~shall be~~ those specified in s. 376.308 or s. 376.82.

Section 3. Holistic review of coastal permitting processes and other programs.—

(1) The Legislature intends to do all of the following:

(a) Build a more resilient and responsive government infrastructure to allow for quick recovery after natural disasters, including hurricanes and tropical storms.

(b) Promote efficiency in state government across all branches, agencies, and other governmental entities and identify any area of improvement within each entity which allows for a quick and effective delivery of services.

(c) Seek out ways to improve the state's administrative procedures in relevant fields to build a streamlined permitting process that withstands disruptions caused by natural disasters, including hurricanes and tropical storms.

(2) The Department of Environmental Protection and each

water management district shall conduct a holistic review of their respective agency's current coastal permitting processes and other permit programs. The review must, at a minimum, include coastal construction control line permits; joint coastal permits; environmental resource permits; state-administered section 404 permits consistent with the terms of the United States Environmental Protection Agency's approval; and permitting processes related to water supply infrastructure, wastewater infrastructure, and onsite sewage treatment and disposal systems.

(3) The purpose of the reviews required under subsection (2) is to identify areas of improvement and to increase efficiency within each process and program. Factors that must be considered in the review include all of the following:

(a) The requirements to obtain a permit.

(b) Time periods for review, including those of commenting agencies, and approval of a permit application.

(c) Areas for improved efficiency and decision-point consolidation within a single project's purpose.

(d) Areas of duplication across one or more permit programs.

(e) The methods of requesting a permit.

(f) Potential modifications to memoranda of agreements between the state and the Federal Government governing delegated or approved federal permitting programs, which modifications would improve the efficiency and predictability of the program's administration, including allowing consistent administration of a permit by a state or federal entity over the lifetime of a permitted project.

(g) Any other factors that may increase the efficiency of a permitting process and may allow for improved storm recovery.

(4) By December 31, 2025, the department and each water management district shall provide their findings and proposed solutions in a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 4. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

2-25-24
Meeting Date

CP #1248
Committee

738
Bill Number or Topic

399198
Amendment Barcode (if applicable)

Name DAVID CULLEN

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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: SIERRA CLUB FLORIDA

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

738
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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Phone _____

Email abasford@aif.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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Feb 15 2024
Meeting Date

Fiscal Policy
Committee

738
Bill Number or Topic

Amendment Barcode (if applicable)

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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 CHAMBER OF COMMERCE

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

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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-15-24
Meeting Date

738
Bill Number (if applicable)

Topic Environmental Management

Amendment Barcode (if applicable)

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Email

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-15-24
Meeting Date

738
Bill Number (if applicable)

Topic ENVIRONMENTAL MANAGEMENT

Amendment Barcode (if applicable)

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Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CANCER CLUSTER VICTIMS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2-15-2024
Meeting Date

Phy Policy
Committee

738
Bill Number or Topic

Amendment Barcode (if applicable)

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Panama City FL 32412
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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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

738
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Environmental Management

Name Karen Woodall

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Phone

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing Earth Justice

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

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 Fiscal Policy

BILL:	CS/SB 754
INTRODUCER:	Transportation Committee and Senator DiCeglie
SUBJECT:	Regulation of Commercial Motor Vehicles
DATE:	February 13, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shutes	Vickers	TR	**Fav/CS**
2.	Wells	Jerrett	ATD	**Favorable**
3.	Shutes	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 754 makes various statutory revisions relating to the regulation and operation of commercial motor vehicles (CMVs). Specifically, the bill updates the date of adoption of federal regulations and rules for CMVs from December 31, 2020, to December 31, 2023, updates federal references, and removes an expired exemption for CMV operators. Additionally, the bill adopts requirements related to the federal Drug and Alcohol Clearinghouse program. States must be compliant with this program by November 18, 2024, or risk losing certain federal grant funding.

The bill will have an insignificant, negative fiscal impact the Department of Highway Safety and Motor Vehicles. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

According to the Department of Highway Safety and Motor Vehicles (DHSMV), driving a CMV requires a higher level of knowledge, experience, skills, and physical abilities than that required

to drive a non-commercial vehicle. Since April 1, 1992, drivers have been required to have a Commercial Driver License (CDL) in order to drive CMVs. [1]

Federal CMV Regulations

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA), an agency within the U.S. Department of Transportation, is to prevent CMV-related fatalities and injuries.[2]

Section 316.003(14), F.S., defines "commercial motor vehicle" as any self-propelled or towed vehicle used on public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, [3] as amended.

Section 316.302(1)(a), F.S., provides that all owners and drivers of a CMV operating on the state's public highways while engaged in *interstate* commerce are subject to rules and regulations contained in the following parts of the Federal Motor Carrier Safety Regulations[4]:

Part	Heading
382	Controlled Substances and Alcohol Use and Testing
383	Commercial Driver's License Standards; Requirements and Penalties
385	Safety Fitness Procedures
386	Rules of Practice for FMCSA Proceedings
390	Federal Motor Carrier Safety Regulations; General
391	Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
392	Driving of Commercial Motor Vehicles
393	Parts and Accessories Necessary for Safe Operation
395	Hours of Service Drivers
396	Inspection, Repair, and Maintenance
397	Transportation of Hazardous Materials; Driving and Parking Rules

Section 316.302(1)(b), F.S., provides that owners or drivers of CMVs engaged in *intrastate* commerce are subject to the same federal regulations, unless otherwise provided in s. 316.302, F.S., as such regulations existed on December 31, 2020.

States generally have three years to adopt such rules to remain compatible with federal regulations. States that remain incompatible after the compliance date risk losing federal grant funding.

During the most recent Annual Program Review of the DHSMV's compliance with these regulations, the FMCSA noted that Florida law does not expressly subject the DHSMV to

[1] DHSMV, *2024 Legislative Bill Analysis: SB 754* (December 12, 2023) at p. 2.
[2] FMCSA, *About Us*, available at https://www.fmcsa.dot.gov/mission/about-us (last visited December 20, 2023).
[3] 49 U.S.C. ss. 1801 et seq.
[4] 49 C.F.R. ch III, subchapter B.

comply with the provisions of 49 CFR part 384, relating to State Compliance with Commercial Driver's License Program.[5]

Commercial Driver Licenses and the Drug and Alcohol Clearinghouse

Owners and drivers of a CMV operating on the state's public highways are subject to rules and regulations contained in the Federal Motor Carrier Safety Regulations, which includes specific regulations on controlled substances and alcohol use, testing, and reporting.[6]

The Drug and Alcohol Clearinghouse is an online database that provides employers of CMV drivers, FMCSA, State Driver Licensing Agencies, and State law enforcement personnel real-time information about drug and alcohol program violations of CMV operators.[7] The Clearinghouse helps to identify CMV drivers who are prohibited from operating a CMV based on federal drug and alcohol program violations, and to ensure such drivers receive required drug or alcohol evaluation and treatment following a violation.[8]

Effective November 18, 2024, the FMCSA requires states use the Clearinghouse to check the status of a commercial driver license (CDL) or commercial learner permit (referred to in Florida as a commercial instructional permit, or CIP) before performing any licensing functions. [9] This federal regulation prohibits states from issuing, renewing, upgrading, or transferring a CDL or CIP if the individual is restricted from operating a CMV due to any drug and alcohol program violations.

Additionally, the FMCSA requires states to establish procedures for "downgrading" a CDL or CIP, which means removing the privilege to operate a CMV from the driver license.[10] If the state receives notification[11] that an individual is prohibited from operating a CMV due to federal alcohol or controlled substances rules, the state must downgrade the CDL or CIP and record such downgrade on the Commercial Driver's License Information System (CDLIS) driver record.[12]

Federal regulations also provide information on reinstatement of the CDL or CIP following completion of return-to-duty requirements, or reinstatement of the CDL or CIP and expunction of the downgrade from the CDLIS driving record for Clearinghouse error corrections.[13]

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[5] DHSMV, *supra* note 3, at 3.
[6] Section 316.302(1), F.S. and *see* 49 C.F.R. Part 382 - Controlled Substances and Alcohol Use Testing.
[7] FMCSA, *About the Clearinghouse - What is the FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse?* https://clearinghouse.fmcsa.dot.gov/About (last visited December 20, 2023).
[8] *Id.*
[9] 49 C.F.R. s. 383.73.
[10] *Id.* and 49 CFR s. 383.5(4).
[11] Pursuant to 49 C.F.R. s. 382.501(a).
[12] CDLIS is "a nationwide computer system that enables state driver licensing agencies…to ensure that each commercial driver has only one driver license and one complete driver record." States use this system to transmit out-of-state convictions and withdrawals, transfer CDL driver records to another state, or to respond to requests for driver status and history. See AAMVA, *Commercial Driver's License Information System (CDLIS),* https://www.aamva.org/technology/systems/driver-licensing-systems/cdlis (last visited December 20, 2023).
[13] 49 C.F.R. s. 383.73.

States are required to adopt compatible CMV driving prohibitions to remain eligible to receive Motor Carrier Assistance Program (MCSAP) grant funds.[14] According to the DHSMV, Florida's current MCSAP federal grant share is $21.4 million.[15]

Driver License Suspension - Informal Review Request

Florida law permits an individual to request an informal review when his or her driver license is suspended in certain instances.[16] The informal review is conducted by a hearing officer designated by the DHSMV, and does not require the presence of a law enforcement officer or a witness. The review consists solely of an examination by the DHSMV of materials submitted by a law enforcement or correctional officer and the person whose license is suspended. Following the examination, a notice is sent to the individual providing the DHSMV's decision to sustain, amend, or invalidate the license suspension.

Section 322.21(9)(a), F.S., provides that for such reviews, the applicant must pay a $25 filing fee, which is deposited into the Highway Safety Operating Trust Fund.

Section 322.31, F.S., provides that the DHSMV's final orders and rulings wherein any person is denied a license, or where a license has been canceled, suspended, or revoked, shall be reviewable as provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county where the person resides.

An applicant for reinstatement of his or her CDL following a disqualification to operate a CMV, must pay a $75 reinstatement fee in addition to the cost of the license.[17]

Florida has nearly 600,000 CDL holders subject to these regulations. [18]

III. Effect of Proposed Changes:

Adoption of Federal CMV Regulations

The bill amends s. 316.302, F.S., to provide that all owners and drivers of CMVs engaged in *intrastate* commerce are subject to CMV rules and regulations, unless otherwise specified, as they existed on December 31, 2023. According to the DHSMV, the FMCSA has adopted or amended six rules between December 31, 2020, and December 31, 2022, which impact the DHSMV.

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[14] See 86 FR 55718, *Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License* (October 7, 2021), available at https://www.federalregister.gov/documents/2021/10/07/2021-21928/controlled-substances-and-alcohol-testing-state-drivers-licensing-agency-non-issuancedowngrade-of (last visited December 20, 2023).

[15] Email from Jonas Marquez, Legislative Affairs Director, DHSMV, *RE: SB 754* - (December 20, 2023) (on file with the Senate Committee on Transportation).

[16] See ss. 322.2615(4) and (5), 322.2616(5) and (6), and 322.64(4) and (5), F.S.

[17] Section 322.21(8), F.S. An original or renewal commercial driver license is $75, except the fee is $48 (same as a Class E driver license) for an applicant who has completed training and is applying for employment or is currently employed in a school system that requires the commercial license. Section 322.21(1)(a) and (b), F.S.

[18] DHSMV, *2024 Legislative Bill Analysis: SB 754* (December 12, 2023) at p. 3.

This update results in the following changes:

- Removes a duplicative requirement that drivers prepare and submit a list of traffic violations annually to their employer;[19]
- Increases the area on the interior of a CMV windshield where vehicle safety technology devices may be mounted;[20]
- Expands the definition of "vehicle safety technology" to include, "systems and items of equipment to promote driver, occupant, and roadway safety," including "systems and devices that contain cameras, lidar, radar, and/or video";[21]
- Permits individuals who do not satisfy certain vision standards to be physically qualified by an ophthalmologist or optometrist annually to operate a CMV;[22]
- Requires rear impact guards be examined as part of the required CMV annual inspection and updates certification and labeling requirements for rear impact protection guards;[23] and
- Requires compliance with regulations related to the Drug and Alcohol Clearinghouse (this issue is described in detail below).

The bill also makes changes in the following sections related to CMVs:

- Amends s. 316.302(1)(a) and (b), F.S., to provide that all owners and drivers of CMVs are subject to the rules and regulations contained in 49 C.F.R. part 384, which requires state compliance with the federal CDL program.
- Removes s. 316.302(1)(e), F.S., which is now obsolete. The paragraph allowed a delay in compliance with the requirements of electronic logging devices and hours of service supporting documents until December 31, 2019.
- Amends s. 316.302(2)(d), F.S., to update to the appropriate federal references.
- Amends s. 322.02, F.S., to provide that the DHSMV is charged with the enforcement and administration of 49 C.F.R. parts 382-386 and 390-397.
- Clarifies in s. 322.05, F.S., that the DHSMV is prohibited from issuing a commercial license to any person who is ineligible to operate a CMV pursuant to 49 C.F.R. part 383.
- Clarifies in s. 322.31, F.S., that the right of review of CDL and CIP downgrades are to be included when there are appeals of final orders.

Drug and Alcohol Clearinghouse Requirements

The bill creates s. 322.591, F.S., which requires the DHSMV to check the Clearinghouse to ensure a driver is not prohibited from operating a motor vehicle any time a person applies for or seeks to renew, transfer, or make any other change to a CDL or CIP. Additionally, the DHSMV may not issue, renew, transfer, or revise the types of authorized vehicles that may be operated or the endorsements applicable to a CDL or CIP for any person for whom DHSMV receives notification pursuant to 49 C.F.R. s. 382.501, that the person is removed from the safety-sensitive function of operating a CMV because of conduct related to federal drug and alcohol prohibitions.

[19] 87 FR 13192 (March 9, 2022).
[20] 49 C.F.R. s. 393.60(e)(1).
[21] 49 C.F.R. s. 393.5.
[22] 49 C.F.R. s. 391.44.
[23] 86 FR 62105 (November 9, 2021).

If the DHSMV receives such notification that a CDL or CIP holder is prohibited from operating a CMV, the DHSMV must downgrade the CDL or CIP. Section 322.01, F.S., defines "downgrade" as defined in 49 C.F.R. s. 383.5(4), which means the state removes the CDL or CIP privilege from the driver's license. The DHSMV must complete and record the downgrade in the Commercial Driver's License Information System (CDLIS) within 60 days following receipt of the notification. If the downgraded driver is otherwise qualified to be issued a Class E (non-commercial) driver license, the DHSMV will issue the Class E license valid for the length of the driver's unexpired license period at no cost.

Immediately following receipt of notification that a driver is prohibited from operating a CMV, the DHSMV must:

- Immediately notify the driver that he or she is prohibited from operating a CMV;
- Provide in the notice to the driver that he or she may request an informal hearing within 20 days following receipt of the notice of the downgrade; and
- If a timely hearing request with the required filing fee ($25) is not received, enter a final order directing the downgrade of the CDL or CIP; or
- If a hearing is requested with the required filing fee, schedule a hearing no later than 30 days after the request is received.

The informal hearing is exempt from the provisions of chapter 120, F.S., and must be conducted before a DHSMV-designated hearing officer who may conduct such hearing from any location in the state by means of communications technology.

The bill requires the federal notification indicating a driver is prohibited from operating a CMV be in the record for consideration by the hearing officer and in any proceeding pursuant to s. 322.31, F.S., relating to right of review. This notification is considered self-authenticating. The bill also provides that the basis for the federal notification received and the information in the Clearinghouse that resulted in such notification is not subject to challenge in the hearing or proceeding under s. 322.31, F.S.

If, prior to the entry of the final order to downgrade the CDL or CIP, the DHSMV receives notification that the driver is no longer prohibited from operating a CMV, the DHSMV must dismiss the action to downgrade the CDL or CIP. If, after entry of a final order that results in the downgrade of a CDL or CIP and the recording in the driver's record that the driver is disqualified from operating a CMV, the DHSMV receives notification that the driver is no longer prohibited from operating a CMV, the DHSMV must reinstate the driver's CDL or CIP upon reinstatement application, which requires a $75 reinstatement fee. Once a person is erroneously identified as prohibited from driving a CMV, the FMCSA will notify the state and the state must promptly reinstate the commercial driving privilege of the affected driver and expunge the driver's driving records accordingly.

The bill exempts the DHSMV from liability for a downgrade resulting from the discharge of the DHSMV's duties related to newly created s. 322.591, F.S., which is the exclusive procedure for the downgrade of a CDL or CIP following notification that a driver is prohibited from operating a CMV.

Finally, the bill clarifies that the downgrade of a driver's CDL or CIP does not preclude the suspension of the driver license or disqualification from operating a CMV for driving under the influence and drug and alcohol testing refusal offenses under Florida 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:

This bill subjects specified individuals to *existing* fees for the DHSMV's informal review process and reinstatement of CDL and CIP driving privileges following a required license downgrade.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires an individual requesting an informal review of a CDL or CIP downgrade to pay the existing $25 filing fee. Similarly, an individual requesting the reinstatement of his or her CDL or CIP following a downgrade must pay the existing $75 fee for license reinstatement.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department estimates a fiscal impact of $226,470 in FTE and contracted resources. The Department has requested and received grant funding to assist in the completion of this work. [24]

The state may lose federal MCSAP grant funding if provisions of the bill related to federal CMV requirements are not adopted. This decrease can range from just under $1 million annually for one year of incompatibility up to $9.9 million annually if the state remained incompatible after four years of required compliance.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.302, 322.01, 322.02, 322.05, 322.07, 322.21, 322.31, 322.34, and 322.61.

This bill creates section 322.591 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 Transportation on January 10, 2024:
The committee substitute provides that when the Drug and Alcohol Clearinghouse notifies a state that a driver was erroneously identified by the Clearinghouse as prohibited from driving a CMV, the Federal Motor Carrier Safety Administration will notify the state and the state must promptly reinstate the commercial driving privilege of the affected driver and expunge the driver's driving records accordingly.

It also clarifies that the right of review of commercial driver license downgrades are to be included when there are appeals of final orders.

B. Amendments:

None.

[24] DHSMV, *2024 Legislative Bill Analysis: SB 754* (December 12, 2023) at p. 8.
[25] Email from DHSMV, *supra* note 113.

By the Committee on Transportation; and Senator DiCeglie

596-02012-24 2024754c1

A bill to be entitled

An act relating to regulation of commercial motor vehicles; amending s. 316.302, F.S.; revising federal regulations to which owners and operators of certain commercial motor vehicles are subject; deleting obsolete language; authorizing agents to remove vehicles or drivers from service and to give certain written notice under certain circumstances; providing penalties; amending s. 322.01, F.S.; revising definitions; defining the term "downgrade"; amending s. 322.02, F.S.; charging the Department of Highway Safety and Motor Vehicles with the administration and enforcement of certain federal regulations; amending s. 322.05, F.S.; prohibiting the department from issuing a commercial motor vehicle license to a person who is ineligible under certain federal regulations; amending s. 322.07, F.S.; revising circumstances under which the department is required to issue a temporary commercial instruction permit; amending s. 322.21, F.S.; applying a reinstatement service fee to a person whose privilege to operate a commercial vehicle has been downgraded; applying a filing fee to a person applying for or seeking to renew, transfer, or make any other change to a commercial driver license or temporary commercial instruction permit; amending s. 322.31, F.S.; requiring that the final orders and rulings of the department regarding commercial driver licenses and commercial instruction permits be reviewable; creating s. 322.591, F.S.; requiring the

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

596-02012-24 2024754c1

department to obtain a person's driving record from the Commercial Driver's License Drug and Alcohol Clearinghouse; prohibiting the department from performing certain actions for a person who is prohibited from operating a commercial motor vehicle under certain federal regulations; requiring the department to downgrade a commercial driver license or temporary commercial instruction permit of a person who is prohibited from operating a commercial motor vehicle under such regulations and to record such downgrade in the Commercial Driver's License Information System; requiring the department to provide to such person certain notification and, upon request, an opportunity for an informal hearing; providing hearing requirements; requiring the department to enter a final order directing the downgrade of the person's commercial driver license or temporary commercial instruction permit under certain circumstances; providing an exception; providing that a request for a hearing tolls certain deadlines; exempting an informal hearing from certain provisions; authorizing such hearing to be conducted by means of communications technology; requiring the department to dismiss the action to downgrade the person's commercial driver license or temporary commercial instruction permit under certain circumstances; requiring the department to record the disqualification of a person from operating a commercial motor vehicle in the person's driving

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

record upon entry of a final order to downgrade the person's commercial driver license or temporary commercial instruction permit; providing construction; requiring reinstatement of the person's commercial driver license or temporary commercial instruction permit under certain circumstances; limiting liability of the department; specifying that certain provisions are the exclusive procedure for downgrade of a commercial driver license or temporary commercial instruction permit; providing construction; authorizing issuance of a Class E driver license to a person who is prohibited from operating a commercial motor vehicle under certain circumstances; amending ss. 322.34 and 322.61, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (1), paragraph (d) of subsection (2), and subsection (9) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(1)(a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382-386 ~~382, 383, 385, 386,~~ and 390-397.

(b) Except as otherwise provided in this section, all

owners and drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382-386 ~~382, 383, 385, 386,~~ and 390-397, as such rules and regulations existed on December 31, 2023 ~~2020~~.

(c) The emergency exceptions provided by 49 C.F.R. s. 392.82 also apply to communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, as provided in the Florida Comprehensive Emergency Management plan, or during a state of emergency declared by executive order or proclamation of the Governor.

(d) Except as provided in s. 316.228 for rear overhang lighting and flagging requirements for intrastate operations, the requirements of this section supersede all other safety requirements of this chapter for commercial motor vehicles.

~~(e) A person who operates a commercial motor vehicle solely in intrastate commerce which does not transport hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply with the requirements of electronic logging devices and hours of service supporting documents as provided in 49 C.F.R. parts 385, 386, 390, and 395 until December 31, 2019.~~

(2)

(d) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. ss. 395.8 and

395.11 ~~s. 395.8~~ if the requirements of 49 C.F.R. s. 395.1(e)(1)(iii) and (iv) ~~s. 395.1(c)(1)(ii), (iii)(A) and (C), and (v)~~ are met.

(9) For the purpose of enforcing this section, any law enforcement officer of the Department of Highway Safety and Motor Vehicles or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance may require the driver of any commercial vehicle operated on the highways of this state to stop and submit to an inspection of the vehicle or the driver's records. If the vehicle or driver is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer or agent may require the vehicle or the driver to be removed from service pursuant to the North American Standard Out-of-Service Criteria, until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer or agent may give written notice requiring correction of the condition within 15 days.

(a) Any member of the Florida Highway Patrol or any law enforcement officer employed by a sheriff's office or municipal police department authorized to enforce the traffic laws of this state pursuant to s. 316.640 who has reason to believe that a vehicle or driver is operating in an unsafe condition may, as provided in subsection (11), enforce ~~the provisions of~~ this section.

(b) Any person who fails to comply with an officer's request to submit to an inspection under this subsection commits

a violation of s. 843.02 if the person resists the officer without violence or a violation of s. 843.01 if the person resists the officer or agent with violence.

Section 2. Present subsections (16) through (48) of section 322.01, Florida Statutes, are redesignated as subsections (17) through (49), respectively, a new subsection (16) is added to that section, and subsection (5) and present subsections (37) and (41) of that section are amended, to read:

322.01 Definitions.—As used in this chapter:

(5) "Cancellation" means the act of declaring a driver license void and terminated but does not include a downgrade.

(16) "Downgrade" has the same meaning as the term "CDL downgrade" as defined in 49 C.F.R. s. 383.5(4).

(38)~~(37)~~ "Revocation" means the termination of a licensee's privilege to drive. The term does not include a downgrade.

(42)~~(41)~~ "Suspension" means the temporary withdrawal of a licensee's privilege to drive a motor vehicle. The term does not include a downgrade.

Section 3. Subsection (2) of section 322.02, Florida Statutes, is amended to read:

322.02 Legislative intent; administration.—

(2) The Department of Highway Safety and Motor Vehicles is charged with the administration and function of enforcement of ~~the provisions of~~ this chapter and the administration and enforcement of 49 C.F.R. parts 382-386 and 390-397.

Section 4. Present subsections (7) through (12) of section 322.05, Florida Statutes, are redesignated as subsections (8) through (13), respectively, and a new subsection (7) is added to that section, to read:

322.05 Persons not to be licensed.—The department may not issue a license:

(7) To any person, as a commercial motor vehicle operator, who is ineligible to operate a commercial motor vehicle pursuant to 49 C.F.R. part 383.

Section 5. Subsection (3) of section 322.07, Florida Statutes, is amended to read:

322.07 Instruction permits and temporary licenses.—

(3) Any person who, except for his or her lack of instruction in operating a commercial motor vehicle, would otherwise be qualified to obtain a commercial driver license under this chapter~~,~~ may apply for a temporary commercial instruction permit. The department shall issue such a permit entitling the applicant, while having the permit in his or her immediate possession, to drive a commercial motor vehicle on the highways~~,~~ if:

(a) The applicant possesses a valid Florida driver license; ~~and~~

(b) The applicant, while operating a commercial motor vehicle, is accompanied by a licensed driver who is 21 years of age or older, who is licensed to operate the class of vehicle being operated, and who is occupying the closest seat to the right of the driver; and

(c) The department has not been notified that, under 49 C.F.R. s. 382.501(a), the applicant is prohibited from operating a commercial motor vehicle.

Section 6. Subsection (8) and paragraph (a) of subsection (9) of section 322.21, Florida Statutes, are amended to read:

322.21 License fees; procedure for handling and collecting

fees.—

(8) A person who applies for reinstatement following the suspension or revocation of the person's driver license must pay a service fee of $45 following a suspension, and $75 following a revocation, which is in addition to the fee for a license. A person who applies for reinstatement of a commercial driver license following the disqualification or downgrade of the person's privilege to operate a commercial motor vehicle must ~~shall~~ pay a service fee of $75, which is in addition to the fee for a license. The department shall collect all of these fees at the time of reinstatement. The department shall issue proper receipts for such fees and shall promptly transmit all funds received by it as follows:

(a) Of the $45 fee received from a licensee for reinstatement following a suspension:

1. If the reinstatement is processed by the department, the department shall deposit $15 in the General Revenue Fund and $30 in the Highway Safety Operating Trust Fund.

2. If the reinstatement is processed by the tax collector, $15, less the general revenue service charge set forth in s. 215.20(1), shall be retained by the tax collector, $15 shall be deposited into the Highway Safety Operating Trust Fund, and $15 shall be deposited into the General Revenue Fund.

(b) Of the $75 fee received from a licensee for reinstatement following a revocation, ~~or~~ disqualification, or downgrade:

1. If the reinstatement is processed by the department, the department shall deposit $35 in the General Revenue Fund and $40 in the Highway Safety Operating Trust Fund.

2. If the reinstatement is processed by the tax collector, $20, less the general revenue service charge set forth in s. 215.20(1), shall be retained by the tax collector, $20 shall be deposited into the Highway Safety Operating Trust Fund, and $35 shall be deposited into the General Revenue Fund.

If the revocation or suspension of the driver license was for a violation of s. 316.193, or for refusal to submit to a lawful breath, blood, or urine test, an additional fee of $130 must be charged. However, only one $130 fee may be collected from one person convicted of violations arising out of the same incident. The department shall collect the $130 fee and deposit the fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver license, but the fee may not be collected if the suspension or revocation is overturned. If the revocation or suspension of the driver license was for a conviction for a violation of s. 817.234(8) or (9) or s. 817.505, an additional fee of $180 is imposed for each offense. The department shall collect and deposit the additional fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver license.

(9) An applicant:

(a) Requesting a review authorized in s. 322.222, s. 322.2615, s. 322.2616, s. 322.27, s. 322.591, or s. 322.64 must pay a filing fee of $25 to be deposited into the Highway Safety Operating Trust Fund.

Section 7. Section 322.31, Florida Statutes, is amended to read:

322.31 Right of review.—The final orders and rulings of the

department wherein any person is denied a license or has a commercial driver license or commercial instruction permit downgraded, or where such license has been canceled, suspended, or revoked, must ~~shall~~ be reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county wherein such person shall reside, in the manner prescribed by the Florida Rules of Appellate Procedure, any provision in chapter 120 to the contrary notwithstanding.

Section 8. Section 322.591, Florida Statutes, is created to read:

322.591 Commercial driver license and temporary commercial instruction permit; Commercial Driver's License Drug and Alcohol Clearinghouse; prohibition on issuance of commercial driver licenses; downgrades.—Beginning November 18, 2024:

(1) When a person applies for or seeks to renew, transfer, or make any other change to a commercial driver license or temporary commercial instruction permit, the department must obtain the person's driving record from the Commercial Driver's License Drug and Alcohol Clearinghouse established pursuant to 49 C.F.R. part 382. The department may not issue, renew, or transfer, or revise the types of authorized vehicles that may be operated or the endorsements applicable to, a commercial driver license or temporary commercial instruction permit for any person for whom the department receives notification that, pursuant to 49 C.F.R. s. 382.501(a), the person is prohibited from operating a commercial motor vehicle.

(2) The department shall downgrade the commercial driver license or temporary commercial instruction permit of a person

for whom the department receives notification that, pursuant to 49 C.F.R. s. 382.501(a), the person is prohibited from operating a commercial motor vehicle. Any such downgrade must be completed and recorded by the department in the Commercial Driver's License Information System within 60 days after the department's receipt of such notification.

(3)(a) Upon receipt of notification that, pursuant to 49 C.F.R. s. 382.501(a), a person is prohibited from operating a commercial motor vehicle, the department shall immediately notify the person who is the subject of such notification that he or she is prohibited from operating a commercial motor vehicle and, upon his or her request, must afford him or her an opportunity for an informal hearing pursuant to this section. The department's notice must be provided to the person in the same manner as, and providing notice has the same effect as, notices provided pursuant to s. 322.251(1) and (2).

(b) An informal hearing under paragraph (a) must be requested no later than 20 days after the person receives the notice of the downgrade. If a request for a hearing is not received within 20 days after receipt of such notice, the department must enter a final order directing the downgrade of the person's commercial driver license or temporary commercial instruction permit unless the department receives notification that, pursuant to 49 C.F.R. s. 382.503(a), the person is no longer prohibited from operating a commercial motor vehicle.

(c) A hearing requested under paragraph (b) must be scheduled and held no later than 30 days after receipt by the department of a request for the hearing. The submission of a request for hearing under paragraph (b) tolls the deadline to

file a petition for writ of certiorari pursuant to s. 322.31 until after the department enters a final order after a hearing under paragraph (b).

(d) The informal hearing authorized by this subsection is exempt from chapter 120. Such hearing must be conducted before a hearing officer designated by the department. The hearing officer may conduct such hearing by means of communications technology.

(e) The notification received by the department pursuant to 49 C.F.R. s. 382.501(a) must be in the record for consideration by the hearing officer and in any proceeding under s. 322.31 and is considered self-authenticating. The basis for the notification received by the department pursuant to 49 C.F.R. s. 382.501(a) and the information in the Commercial Driver's License Drug and Alcohol Clearinghouse which resulted in such notification are not subject to challenge in the hearing or in any proceeding brought under s. 322.31.

(f) If, before the entry of a final order arising from a notification received by the department pursuant to 49 C.F.R. s. 382.501(a), the department receives notification that, pursuant to 49 C.F.R. s. 382.503(a), the person is no longer prohibited from operating a commercial motor vehicle, the department must dismiss the action to downgrade the person's commercial driver license or temporary commercial instruction permit.

(g) Upon the entry of a final order that results in the downgrade of a person's commercial driver license or temporary commercial instruction permit, the department shall record immediately in the person's driving record that the person is disqualified from operating a commercial motor vehicle. The

downgrade of a commercial driver license or temporary commercial instruction permit pursuant to a final order entered pursuant to this section and, upon the entry of a final order, the recording in the person's record that the person subject to such final order is disqualified from operating a commercial motor vehicle are not stayed during the pendency of any proceeding pursuant to s. 322.31.

(h) If, after the department enters a final order that results in the downgrade of a person's commercial driver license or temporary commercial instruction permit and records in the person's driving record that the person is disqualified from operating a commercial motor vehicle, the department receives:

1. Notification that, pursuant to 49 C.F.R. s. 382.503(a), the person is no longer prohibited from operating a commercial motor vehicle, the department must reinstate the person's commercial driver license or temporary commercial instruction permit upon application by such person.

2. Notification from the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. s. 383.73(q)(3) that the person was erroneously identified as being prohibited from operating a commercial motor vehicle, the department must notify the person; reinstate, without payment of the reinstatement fee required pursuant to s. 322.31, the person's commercial driver license or commercial instruction permit as expeditiously as possible; and remove any reference to the person's erroneous prohibited status from the Commercial Driver's License Information System and the person's record.

(i) The department is not liable for any commercial driver license or temporary commercial instruction permit downgrade

resulting from the discharge of its duties.

(j) This section is the exclusive procedure for the downgrade of a commercial driver license or temporary commercial instruction permit following notification received by the department that, pursuant to 49 C.F.R. s. 382.501(a), a person is prohibited from operating a commercial motor vehicle.

(k) The downgrade of a person's commercial driver license or temporary commercial instruction permit pursuant to this section does not preclude the suspension of the driving privilege for that person pursuant to s. 322.2615 or the disqualification of that person from operating a commercial motor vehicle pursuant to s. 322.64. The driving privilege of a person whose commercial driver license or temporary commercial instruction permit has been downgraded pursuant to this section also may be suspended for a violation of s. 316.193.

(4) A person for whom the department receives notification that, pursuant to 49 C.F.R. s. 382.501(a), the person is prohibited from operating a commercial motor vehicle may, if otherwise qualified, be issued a Class E driver license pursuant to s. 322.251(4), valid for the length of his or her unexpired license period, at no cost.

Section 9. Subsection (2) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(2) Any person whose driver license or driving privilege has been canceled, suspended, or revoked as provided by law, or who does not have a driver license or driving privilege but is under suspension or revocation equivalent status as defined in

s. 322.01(43) ~~s. 322.01(42)~~, except persons defined in s. 322.264, who, knowing of such cancellation, suspension, revocation, or suspension or revocation equivalent status, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, or while under suspension or revocation equivalent status, commits:

(a) A misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b)1. A misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, upon a second or subsequent conviction, except as provided in paragraph (c).

2. A person convicted of a third or subsequent conviction, except as provided in paragraph (c), must serve a minimum of 10 days in jail.

(c) A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, upon a third or subsequent conviction if the current violation of this section or the most recent prior violation of the section is related to driving while license canceled, suspended, revoked, or suspension or revocation equivalent status resulting from a violation of:

1. Driving under the influence;

2. Refusal to submit to a urine, breath-alcohol, or blood alcohol test;

3. A traffic offense causing death or serious bodily injury; or

4. Fleeing or eluding.

The element of knowledge is satisfied if the person has been

previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation, or suspension or revocation equivalent status; or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

Section 10. Subsection (4) of section 322.61, Florida Statutes, is amended to read:

322.61 Disqualification from operating a commercial motor vehicle.—

(4) Any person who is transporting hazardous materials as defined in s. 322.01(25) ~~s. 322.01(24)~~ shall, upon conviction of an offense specified in subsection (3), be disqualified from operating a commercial motor vehicle for a period of 3 years. The penalty provided in this subsection shall be in addition to any other applicable penalty.

Section 11. This act shall take effect July 1, 2024.

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 Fiscal Policy

BILL:	CS/SB 768
INTRODUCER:	Health Policy Committee and Senator Stewart
SUBJECT:	Duties and Prohibited Acts Associated with Death
DATE:	February 13, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	**Favorable**
2.	Brown	Brown	HP	**Fav/CS**
3.	Wyant	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 768 revises current law that requires a person who becomes aware of a death under specified circumstances to report the death to the medical examiner in the district where the death occurred. The bill allows such person the option of making the report to a law enforcement agency having jurisdiction over the location.

The bill also revises current law's criminal penalties associated with a person's failure to make the report or the person's unlawful behavior after becoming aware of the death and elevates certain offenses to third degree felonies, as opposed to first degree misdemeanors as under current law.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Duty to Report

Section 406.12, F.S., requires any person in the district where a death occurs, including all municipalities and unincorporated and federal areas, who becomes aware of the death of a person due to circumstances listed under s. 406.11, F.S., to report such death and circumstances forthwith[1] to the district medical examiner.

[1] Merriam-Webster defines "forthwith" to mean "without any delay."

A person commits a first degree misdemeanor[2] if he or she:

- Knowingly fails or refuses to report such death and circumstances;
- Refuses to make available prior medical records or other information pertinent to the death investigation; or
- Without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter evidence or circumstances surrounding the death.

Section 406.11, F.S., provides the following circumstances that require the medical examiner of the district in which the death occurred or the body was found, to determine the cause of death and, for that purpose, make or perform such examinations, investigations, and autopsies as he or she deems necessary or as requested by the state attorney:

- When a person dies in this state:
  - Of criminal violence.
  - By accident.
  - By suicide.
  - Suddenly, when in apparent good health.
  - Unattended by a practicing physician or other recognized practitioner.
  - In any prison or penal institution.
  - In police custody.
  - In any suspicious or unusual circumstance.
  - By criminal abortion.
  - By poison.
  - By disease constituting a threat to public health.
  - By disease, injury, or toxic agent resulting from employment.[3]
- When a dead body is brought into this state without proper medical certification.[4]
- When a body is to be cremated, dissected, or buried at sea.[5]

III. Effect of Proposed Changes:

The bill amends s. 406.12, F.S., to specify that a person who becomes aware of the death of any person occurring under the circumstances described in s. 406.11, F.S., must report such death and circumstances forthwith to the district medical examiner or to a law enforcement agency having jurisdiction over the location. Current law does not provide the option of reporting to a law enforcement agency.

The bill increases, from a first degree misdemeanor to a third degree felony,[6] the criminal penalty for any person who, with the intent to conceal such death or alter the evidence or circumstances surrounding such death, does any of the following:

- Knowingly fails or refuses to report such death and circumstances;

---

[2] A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine of up to $1,000. *See* ss. 775.082 and 775.083, F.S.
[3] Section 406.12(1)(a), F.S.
[4] Section 406.12(1)(b), F.S.
[5] Section 406.12(1)(c), F.S.
[6] A third degree felony is generally punishable by no more than five years in state prison and a fine not exceeding $5,000. *See* ss. 775.082 and 775.083, F.S.

- Refuses to make available prior medical records or other information pertinent to the death investigation; or
- Without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body.

The bill applies current law's penalty of a first degree misdemeanor when the following offenses are committed without the intent to conceal or alter evidence or circumstances:

- The knowing failure or refusal to report such death and circumstances; or
- The refusal to make available prior medical records or other information pertinent to the death investigation.

The bill provides an effective date of July 1, 2024.

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:

The Criminal Justice Estimating Conference found the impact to be positive insignificant.

Per the Florida Department of Law Enforcement, in the fiscal year 2022-23, there were nine arrests under s. 406.12, F.S., with two adjudications withheld.[7]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 406.12 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 Health Policy on February 6, 2024:
The committee substitute:

- Creates the option for a person to report a death covered under the bill to a law enforcement agency having jurisdiction over the location where the body was found.
- Revises current law's criminal penalties associated with a person's failure to make the report or the person's unlawful behavior after becoming aware of the death and elevates certain offenses to third degree felonies, as opposed to first degree misdemeanors as under current law.

B. Amendments:

None.

[7] *See* Office of Economic and Demographic Research, *CS/SB 768 – Duties and Prohibited Acts Associated with Death (identical HB 1653*), available at http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm. (Last accessed February 13, 2024).

By the Committee on Health Policy; and Senator Stewart

588-03020-24 2024768c1

A bill to be entitled

An act relating to duties and prohibited acts associated with death; amending s. 406.12, F.S.; authorizing that a report regarding specified deaths and circumstances be made to a certain law enforcement agency in addition to the district medical examiner; increasing the criminal penalty for persons who fail or refuse to report a death or who refuse to make available certain information with the intent to conceal the death or alter the evidence and circumstances surrounding the death; increasing the criminal penalty for persons who willfully touch, remove, or disturb a body without an order from the office of the district medical examiner with the intent to conceal the death or alter the evidence and circumstances surrounding the death; providing an effective date.

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

Section 1. Section 406.12, Florida Statutes, is amended to read:

406.12 Duty to report; prohibited acts.—

(1) It is the duty of any person in the district where a death occurs, including all municipalities and unincorporated and federal areas, who becomes aware of the death of any person occurring under the circumstances described in s. 406.11 to report such death and circumstances forthwith to the district medical examiner or to a law enforcement agency having

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jurisdiction over the location.

(2) Any person who knowingly fails or refuses to report such death and circumstances as required under subsection (1) or~~,~~ who refuses to make available prior medical or other information pertinent to the death investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person~~, or~~ who, with the intent to conceal such death or to alter the evidence or circumstances surrounding such death:

(a) Violates subsection (2); or

(b) Without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, ~~with the intent to alter the evidence or circumstances surrounding the death, shall be guilty of a misdemeanor of the first~~

commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

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

02-15-2024
Meeting Date

FISCAL POLICY
Committee

SB 0768
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ellie Shea (Lieutenant)

Phone 407-955-1275

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ORLANDO, FL. 32804
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

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ORANGE COUNTY SHERIFF'S OFFICE

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	SB 818
INTRODUCER:	Senators Avila and Collins
SUBJECT:	Military Leave
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Proctor	MS	**Favorable**
2.	Hunter	Ryon	CA	**Favorable**
3.	Brown	Yeatman	FP	**Favorable**

I. Summary:

SB 818 revises a requirement that a public employer provide an employee or official who is a servicemember a full paid leave of absence for the first 30 days of active military service. The bill limits application of the paid leave of absence to a servicemember who is activated under federal military service that is equal to or greater than 90 consecutive days.

The bill takes effect July 1, 2024.

II. Present Situation:

Uniformed Services Employment and Reemployment Rights Act (USERRA)

The provisions of the federal USERRA[1] apply to the state.[2] USERRA provides employment protections to servicemembers who have to leave employment to perform military service.

USERRA areas of coverage apply to:

- Reemployment rights;
- Freedom from discrimination and retaliation; and
- Continuation of health insurance coverage.[3]

USERRA requires compliance of private and public employers, including at the state and local level.[4]

[1] Chapter 43, Title 38 U.S.C.
[2] Section 115.15, F.S.
[3] U.S. Dept' of Labor, *Veterans' Employment and Training Service, Know Your Rights*, *available at* https://www.dol.gov/agencies/vets/programs/userra/aboutuserra#:~:text=USERRA%20prohibits%20employment%20discrimination%20against,obligations%2C%20or%20intent%20to%20serve (last visited Jan. 5, 2024).
[4] *Id*. at 2.

State Law on Public Employment Leave of Absence for Active Military Duty

A paid leave of absence from public employment[5] for a servicemember to participate in training or active military service is governed by ch. 115, F.S.

A servicemember means a person serving as a member of the:
- United States Armed Forces[6] on active or state active duty;
- Florida National Guard; or
- United States Reserve Forces.[7]

A period of active military service means the duration of the date of entering active military service until death or 30 days immediately succeeding the date of discharge from active military service or return from active military service, whichever is first.[8]

A public official or employee who is also a servicemember of the National Guard or a reserve component of the United States Armed Forces is eligible to receive full public pay, regardless of any other compensation from the military or other source, for the first 30 days of a leave of absence to perform active military service.[9,10] Beyond the first 30 days, an employer may supplement military pay to bring the total salary of the employee, including base military pay to the amount earned before the start of active military duty.[11] During the time that a public employee is in active military service, the employer must continue to provide state-issued health insurance and other public benefits.[12]

A leave of absence due to military training is addressed separately from active military duty.[13] A public official or employee who is a servicemember is entitled to a leave of absence without loss of vacation leave, pay, time, or efficiency rating for each day ordered to military training. However, a leave of absence is limited to 240 working hours in any one annual period.[14]

III. Effect of Proposed Changes:

SB 818 revises a requirement that a public employer provide an employee or official who is a servicemember a full paid leave of absence for the first 30 days of active military service. The bill limits application of the paid leave of absence to a servicemember who is activated under federal military service that is equal to or greater than 90 consecutive days.

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[5] Sections 115.09 and 115.14, F.S., provide that public employment includes employment with the state, a county, a municipality or another political subdivision of the state, including district school and community college officers, and applies to both employment as an official and an employee.
[6] Section 250.01(4), F.S., defines "armed forces" to mean the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
[7] Section 250.01(19), F.S.
[8] Section 115.08(2), F.S.
[9] Sections 115.09 and 115.14, F.S.
[10] Op. Att'y Gen. Fla. 98-43 (1998).
[11] Section 115.14, F.S.
[12] *Id*.
[13] Section 115.07, F.S.
[14] Section 115.07(2), F.S.

The bill takes effect July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public employers may realize a cost savings by the narrowing application of the bill to active federal military service of at least a minimum duration of 90 days. A servicemember called to active federal military service for fewer than 90 days would not be eligible for up to 30 days of pay by the public employer.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 115.09 and 115.14.

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.

By Senator Avila

39-01058-24 2024818__

A bill to be entitled

An act relating to military leave; amending ss. 115.09 and 115.14, F.S.; providing that public officials and employees of the state, a county, a municipality, or a political subdivision, respectively, are entitled to their full pay for the first 30 days of military service, if such service is equal to or greater than a specified timeframe; making technical changes; providing an effective date.

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

Section 1. Section 115.09, Florida Statutes, is amended to read:

115.09 Leave to public officials for military service.—All officials of the state, the several counties of the state, and the municipalities or political subdivisions of the state, including district school and community college officers, which officials are also servicemembers in the National Guard or a reserve component of the Armed Forces of the United States, must ~~shall~~ be granted leave of absence from their respective offices and duties to perform active military service, with the first 30 days of any such leave of absence to be with full pay for active federal military service that is equal to or greater than 90 consecutive days.

Section 2. Section 115.14, Florida Statutes, is amended to read:

115.14 Employees.—All employees of the state, the several counties of the state, and the municipalities or political

39-01058-24 2024818__

subdivisions of the state must ~~shall~~ be granted leave of absence under the terms of this law; upon such leave of absence being granted such ~~said~~ employee must ~~shall~~ enjoy the same rights and privileges as are ~~hereby~~ granted to officials under this law, ~~insofar as may be,~~ including, without limitation, receiving full pay for the first 30 days for federal military service that is equal to or greater than 90 consecutive days. Notwithstanding ~~the provisions of~~ s. 115.09, the employing authority may supplement the military pay of its officials and employees who are reservists called to active military service after the first 30 days in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to active military duty. The employing authority shall continue to provide all health insurance and other existing benefits to such officials and employees as required by the Uniformed Services Employment and Reemployment Rights Act, chapter 43 of Title 38 U.S.C.

Section 3. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

SB 818
Bill Number or Topic

Amendment Barcode (if applicable)

Name Mark Oglesby

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Tallahassee FL 32399
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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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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 Fiscal Policy

BILL:	CS/CS/SB 830
INTRODUCER:	Fiscal Policy Committee; Health Policy Committee; and Senator Collins
SUBJECT:	An act relating to student cardiac and medical emergencies
DATE:	February 19, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Morgan	Brown	HP	**Fav/CS**
2.	Gerbrandt	McKnight	AHS	**Favorable**
3.	Morgan	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 830 amends the Education Code, creating s. 1003.457, F.S., to require each public school to have at least one automated external defibrillator (AED) on school grounds that meets specific requirements. Public schools are encouraged to have a sufficient number of AEDs on campus and to establish partnerships to fiscally support this goal. Charter and private schools are encouraged to do the same.

The bill also establishes that an individual who uses an AED or performs cardiopulmonary resuscitation (CPR) is immune from civil liability, requires that the Florida Department of Education (DOE) must enter into statewide contracts for certain purposes, requires the Commissioner of Education to create and disseminate protocols and plans related to AED use in schools, and requires the State Board of Education to adopt rules.

The bill also amends s. 1012.55, F.S., to require that an athletic coach in any public school in the state must hold and maintain a certification in CPR, first aid, and the use of an AED. The certification must be consistent with national, evidence-based emergency cardiovascular care guidelines.

The bill provides that, once enacted, the act may be cited as the "HeartCharged Act."

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Cardiopulmonary Resuscitation, First Aid, and Automatic External Defibrillation

Many types of injuries and illnesses can occur when participating in organized sports, including sudden cardiac arrest. While rare in young, healthy athletes, it can happen, and preparation via an emergency action plan, as well as required coursework and training, is pivotal in preparing coaches, parents and other athletics personnel or staff to respond in the most effective way to save lives.[1]

Cardiopulmonary resuscitation (CPR) is an emergency lifesaving procedure performed when the heart stops beating. Immediate CPR can double or triple chances of survival after cardiac arrest by keeping the blood flow active until the arrival of trained medical staff.[2]

First aid refers to medical attention that is usually administered immediately on-site after the injury occurs. It often consists of a one-time, short-term treatment and requires little technology or training to administer. First aid can include cleaning minor cuts, scrapes, or scratches; treating a minor burn; applying bandages and dressings; the use of non-prescription medicine; draining blisters; removing debris from the eyes; massage; and drinking fluids to relieve heat stress.[3]

An automated external defibrillator (AED) is a lightweight, portable device. It delivers an electric shock through the chest to the heart when it detects an abnormal rhythm and changes the rhythm back to normal.[4] AEDs can greatly increase a cardiac arrest victim's chances of survival.[5] Although formal AED training isn't required, it's recommended to increase the confidence level of the user, promoting better outcomes.[6]

Student Extracurricular Activities and Athletics Legislation

Currently, the Education Code provides that each public school that is a member of the Florida High School Athletic Association (FHSAA) must have an operational AED on school grounds. The AED must be available in a clearly marked and publicized location for each athletic contest, practice, workout, or conditioning session, including those conducted outside of the school year. Public and private partnerships are encouraged to cover the cost associated with the purchase, placement, and training in the use of the AED.[7]

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[1] Atlantic Health System, *How to Be Better Prepared at a Child's Sporting Event, available at* https://www.atlantichealth.org/about-us/stay-connected/news/content-central/2023/cardiac-arrest-kids-sports.html (last visited Feb. 1, 2024).
[2] American Heart Association Emergency Cardiovascular Care, *What is CPR?, available at* https://cpr.heart.org/en/resources/what-is-cpr (last visited Feb. 1, 2024).
[3] Occupational Safety and Health Administration, *What is First Aid?, available at* https://www.osha.gov/medical-first-aid/recognition (last visited Feb. 1, 2024).
[4] American Heart Association, *What Is an Automated External Defibrillator?,* available at https://www.heart.org/-/media/files/health-topics/answers-by-heart/what-is-an-aed.pdf (last visited Feb. 16, 2024).
[5] *Supra* note 2.
[6] *Supra* note 4.
[7] Section 1006.165(1)(a), F.S.

Under current law, an FHSAA member school employee or volunteer with current training in CPR and use of an AED must be present at each athletic event during and outside of the school year, including athletic contests, practices, workouts, and conditioning sessions. The training must include completion of a course in CPR or a basic first aid course that includes CPR training, and demonstrated proficiency in the use of an AED. Each employee or volunteer who is reasonably expected to use an AED must complete this training.[8]

The location of each AED must be registered with a local emergency medical services medical director. Each employee or volunteer required to complete the training must annually be notified in writing of the location of each AED on school grounds.[9] Immunity from civil liability for the use of AEDs by employees and volunteers is covered under the Good Samaritan Act[10] and the Cardiac Arrest Survival Act.[11, 12]

Florida Department of Education

The DOE has the responsibility and authority to write rules necessary to protect the health and safety of staff and students of public and private schools in Florida. The Department of Health has inspection authority to apply the DOE standards.[13]

The applicability of a DOE rule is dependent on the type of school. However, in the case of charter schools, DOE standards apply based on the individual charter school's physical location.[14]

- If the charter school is located on public school property or property owned by the local county school board, the public school rule standards apply.
- If the charter school is located on property or in a building not owned by the local county school board, than the private school rule standards apply.

Public K-12 Schools

Public K-12 schools include charter schools and consist of:[15]

- Kindergarten classes;
- Elementary, middle, and high school grades and special classes;
- Virtual instruction programs;
- Workforce education;
- Career centers;
- Adult, part-time, and evening schools, courses, or classes, as authorized by law to be operated under the control of district school boards; and
- Lab schools operated under the control of state universities.

[8] Section 1006.165(1)(b), F.S.
[9] Section 1006.165(1)(c), F.S.
[10] Section 768.13, F.S.
[11] Section 768.1325, F.S.
[12] Section 1006.165(d), F.S.
[13] Section 381.006(15), F.S.
[14] Florida Department of Health, *Public, Private, and Charter Schools, available at* https://www.floridahealth.gov/environmental-health/group-care/public-private-schools.html (last visited Feb. 16, 2024).
[15] Section 1000.04(2), F.S.

Charter schools are public schools that operate under a performance contract, or a "charter," designed to create exemptions from many regulations produced for traditional public schools while maintaining accountability for academic and financial results. The charter contract between the charter school governing board and the district school board details the school's mission, program, goals, students served, methods of assessment and ways to measure success. The length of time for which charters are granted varies, but most exist for five years.[16]

Private Schools

A private school is a nonpublic school defined as an individual, association, co-partnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(16), F.S., or that gives pre-employment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the afore-mentioned schools through correspondence or extension, except those licensed under the provisions of ch. 1005, F.S. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41, F.S.[17]

III. Effect of Proposed Changes:

Section 1 provides that, once enacted, the act may be cited as the "HeartCharged Act."

Section 2 creates s. 1003.457, F.S., to require each public school to have at least one operational AED on school grounds, even outside the school year. The AED may not be placed in the school's athletic facilities and must be placed according to guidelines set by an organization focused on emergency cardiovascular care in a location that is unlocked and easily accessible to anyone at any time.

The bill requires that each AED must have appropriate accompanying signage, including, but not limited to, signage at the AED's exact location directing responders to the building or room where the AED is routinely kept. Each AED and all of its components must be maintained according to the manufacturer's instructions and kept in proper working order.

Public schools are encouraged under the bill to have, or work towards acquiring and placing, a sufficient number of AEDs, as determined by the Cardiac Emergency Response Plan,[18] to allow a person to retrieve an AED within three minutes of a cardiac or medical emergency anywhere on school grounds. Each school is encouraged to establish public and private partnerships and seek grants, gifts, and other donations to cover the costs associated with the purchase, placement, and training in the use of an AED.

[16] Florida Department of Education, *Charter Schools, Frequently Asked Questions, General Information, What are charter schools?, available at* https://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml (last visited Feb. 16, 2024).
[17] Section 1002.01(3), F.S.
[18] The Cardiac Emergency Response Plan is provided under s. 1003.457(4), F.S., as created by the bill.

Charter and private schools are encouraged to have at least one operational AED on school grounds and to meet the public school requirements. A charter or private school that elects to meet these standards may utilize the DOE's statewide contracts for AEDs and will be provided with all protocols for deployment and administration of AEDs in schools by the Commissioner of Education.

The bill provides that the use of AEDs or CPR under the bill is immune from civil liability, pursuant to ss. 768.13 and 768.1325, F.S., also known as the Good Samaritan Act and the Cardiac Arrest Survival Act, respectively.

The bill requires the DOE to enter into statewide contracts for AEDs, in keeping with updated technologies and conveniences of available AEDs on the market, to provide discounts to schools and school districts.

The bill requires the Commissioner of Education, at his or her sole discretion, to create and disseminate all of the following:

- Protocols for the deployment and administration of AEDs in schools.
- A Cardiac Emergency Response Plan in accordance with guidelines set by nationally recognized, evidence-based standards to be developed by each school which address the appropriate use of school personnel to respond to incidents involving an individual experiencing sudden cardiac arrest or a similar life-threatening emergency while on school grounds.
- Appropriate school staff must be trained in first-aid, CPR, and AED use that follows evidence-based guidelines set forth by an organization focused on emergency cardiovascular care.

The bill also requires the State Board of Education to adopt rules.

Section 3 amends s. 1012.55, F.S., to require that an individual employed and rendering services as a Florida public school athletic coach must hold and maintain a certification in CPR, first aid, and the use of an AED. The certification must be consistent with national, evidence-based emergency cardiovascular care guidelines.

Section 4 provides an effective date of July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a fiscal impact on state expenditures, as the DOE is required under the bill to negotiate and enter statewide contracts for AEDs. At this time, the impact to schools and school districts is indeterminate; there are potential costs associated with required staff training, and it is unclear what public and private partnerships will be established to subsidize AED purchase, placement, and training costs.

VI. Technical Deficiencies:

The language under s. 1003.457(4), F.S., as created by the bill, has a parallel construction problem. That subsection provides that three items, found in paragraphs (a) through (c), are to be created and disseminated. However, paragraph (c) does not describe any item that may be created or disseminated. Instead, paragraph (c) appears to create a training requirement that must be met as part of the bill's implementation. The bill may benefit from an amendment to cure this parallel construction deficiency.

VII. Related Issues:

In the Education Code, a charter school is included in the definition of a public K-12 school. The bill requires that each public school have at least one operational AED on school grounds, while charter and private schools are encouraged to meet this requirement. Therefore, it is unclear whether all charter schools are exempt from the requirement, or only those located on property or in a building not owned by the local county school board.

The bill provides that the Commissioner of Education, at his or her sole discretion, shall create and disseminate a number of items relating to the bill's implementation. However, by providing that the Commissioner "shall" perform that function "at his or her sole discretion," the language creates uncertainty as to whether or not the bill creates a requirement for the Commissioner. An amendment to that language may provide clarity as to the bill's intent.

VIII. Statutes Affected:

This bill creates one non-statutory section of the Laws of Florida.

This bill creates section 1003.457 of the Florida Statutes.

This bill substantially amends section 1012.55 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/CS by Fiscal Policy on February 15, 2024:
The committee substitute provides that the act may be cited as the "HeartCharged Act," retains the provisions of the underlying bill, and creates s. 1003.457, F.S., to:

- Require each public school to have at least one AED on school grounds that meets specific requirements.
- Encourage public schools to have a sufficient number of AEDs on campus and to establish partnerships to fiscally support this goal.
- Encourage charter and private schools to meet the same standards as the public schools.
- Provide that the use of AEDs or CPR under the bill is immune from civil liability, pursuant to ss. 768.13 and 768.1325, F.S., also known as the Good Samaritan Act and the Cardiac Arrest Survival Act, respectively.
- Require that the DOE must enter into statewide contracts for certain purposes.
- Require the Commissioner of Education, at his or her sole discretion, to create and disseminate protocols and plans related to AED use in schools.
- Require the State Board of Education to adopt rules.

CS by Health Policy on January 30, 2024:
The committee substitute removes Section 1 of the underlying bill and retains only the amendment to s. 1012.55, F.S., to update the qualifications of a Florida public school athletic coach to include a certification in CPR, first aid, and the use of an AED.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
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	.	
	.	

The Committee on Fiscal Policy (Collins) recommended the following:

Senate Amendment (with title amendment)

Before line 12
insert:
Section 1. This act may be cited as the "HeartCharged Act."
Section 2. Section 1003.457, Florida Statutes, is created to read:
1003.457 Automated external defibrillators on school grounds.—
(1)(a) In addition to the requirements of s. 1006.165, each

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public school must have at least one operational automated external defibrillator on school grounds. Each defibrillator must be placed according to guidelines set by an organization focused on emergency cardiovascular care, including placement in a location that is unlocked and easily accessible to anyone at any time, including outside of the school year. Such defibrillator may not be placed in the school's athletic facilities. Each defibrillator must have appropriate accompanying signage, including, but not limited to, signage at the defibrillator's exact location directing responders to the building or room where the defibrillator is routinely kept. Each defibrillator and all of its components must be maintained according to the manufacturer's instructions and kept in proper working order. Each school is encouraged to have or work towards acquiring and placing a sufficient number of defibrillators on school grounds, as determined by the Cardiac Emergency Response Plan, to allow a person to retrieve a defibrillator within 3 minutes after a cardiac or medical emergency in which the use of a defibrillator is needed anywhere on school grounds. Each school is encouraged to establish public and private partnerships and seek grants, gifts, and other donations to cover the costs associated with the purchase, placement, and training in the use of a defibrillator.

(b) Each charter school and private school is encouraged to have at least one operational defibrillator on school grounds and to meet the requirements of paragraph (a). A charter or private school that elects to comply with this section may utilize the statewide contracts under subsection (3) and will be provided with all protocols for the deployment and

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administration of defibrillators in schools, as disseminated pursuant to subsection (4).

(2) The use of defibrillators or cardiopulmonary resuscitation are immune from civil liability, pursuant to ss. 768.13 and 768.1325, also known as the Good Samaritan Act and the Cardiac Arrest Survival Act, respectively.

(3) The Department of Education shall enter into statewide contracts for defibrillators, pursuant to the updated technologies and conveniences of available defibrillators on the market, to provide statewide discounts to schools and school districts.

(4) The Commissioner of Education, at his or her sole discretion, shall create and disseminate all of the following:

(a) The protocols for the deployment and administration of defibrillators in schools.

(b) A Cardiac Emergency Response Plan in accordance with guidelines set by nationally recognized, evidence-based standards to be developed by each school which addresses the appropriate use of school personnel to respond to incidents involving an individual experiencing sudden cardiac arrest or a similar life-threatening emergency while on school grounds.

(c) Appropriate school staff must be trained in first aid, cardiopulmonary resuscitation, and automated external defibrillator use that follows evidence-based guidelines set forth by an organization focused on emergency cardiovascular care.

(5) The State Board of Education shall adopt rules to administer this section, including those necessary for the protocols and plans created and disseminated under subsection

645726

(4).

========== 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 student cardiac and medical emergencies; providing a short title; creating s. 1003.457, F.S.; requiring each public school to have at least one automated external defibrillator on school grounds; providing requirements for such defibrillators; encouraging public schools to have a sufficient number of defibrillators on school grounds, as determined by the Cardiac Emergency Response Plan, to allow a person to retrieve one within a specified timeframe; encouraging each public school to establish public and private partnerships and seek gifts, grants, and other donations for specified purposes; encouraging each charter school and private school to have at least one defibrillator on school grounds and to comply with specified requirements; authorizing such schools to utilize specified state contracts; requiring that such schools be provided with certain protocols and plans; providing immunity from liability for school employees and students under the Good Samaritan Act and the Cardiac Arrest Survival Act; requiring the Department of Education to enter into statewide contracts for specified purposes; requiring the Commissioner of Education, at his or her sole

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discretion, to create and disseminate specified protocols and plans relating to the use of defibrillators in schools; requiring the State Board of Education to adopt rules; amending

By the Committee on Health Policy; and Senator Collins

588-02645-24 2024830c1

A bill to be entitled

An act relating to youth athletic activities; amending s. 1012.55, F.S.; revising the requirements for certain athletic coaches to include certification in cardiopulmonary resuscitation, first aid, and the use of an automatic external defibrillator; providing requirements for such certification; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 1012.55, Florida Statutes, is amended to read:

1012.55 Positions for which certificates required.—

(2)(a)1. Each person who is employed and renders service as an athletic coach in any public school in any district of this state shall:

a. Hold a valid temporary or professional certificate or an athletic coaching certificate. The athletic coaching certificate may be used for either part-time or full-time positions.

b. Hold and maintain a certification in cardiopulmonary resuscitation, first aid, and the use of an automatic external defibrillator. The certification must be consistent with national evidence-based emergency cardiovascular care guidelines.

2. The provisions of this subsection do not apply to any athletic coach who voluntarily renders service and who is not employed by any public school district of this state.

Section 2. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

830
Bill Number or Topic

645726
Amendment Barcode (if applicable)

Name Tiffany McCaskill Henderson

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Email tiffany.henderson@heart.org

Tallahassee FL 32317
City State Zip

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

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☑ I am a registered lobbyist, representing: American Heart 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. 2020-2022JointRules.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

02/15/2024
Meeting Date

Fiscal Policy
Committee

CS/SB 830
Bill Number or Topic

645726
Amendment Barcode (if applicable)

Name Marnie George

Phone 850 510-8866

Address 413 South Ride
Street

Email marnie@teamjb.com

Tallahassee FL 32303
City *State* *Zip*

Reset Form

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 Chapter American College of Cardiology

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

830
Bill Number or Topic

645726
Amendment Barcode (if applicable)

Name Samantha Greer

Phone (813) 527-0172

Address 19401 Shumard Oak Drive
Street

Email samantha@corcoranpartners.com

Land O Lakes FL 34638
City *State* *Zip*

Reset Form

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:
Who We Play For

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

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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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2/15/2024
Meeting Date

Fiscal Policy
Committee

830
Bill Number or Topic

Amendment Barcode (if applicable)

Name Samantha Greer

Phone (813) 527-0172

Address 19401 Shumard Oak Drive
Street

Email samantha@corcoranpartners.com

Land O Lakes | FL | 34638
City | *State* | *Zip*

Reset Form

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:

Who We Play For

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

S30
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Mazzola

Phone 407 855 7604

Address 1747 Orlando Central Pkwy
Street

Email Legislation@floridapta.org

Orlando FL 32809
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:
Florida PTA

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/15/2024
Meeting Date

Fiscal Policy
Committee

CS/SB 830
Bill Number or Topic

Amendment Barcode (if applicable)

Name Marnie George

Phone 850 510-8866

Address 413 South Ride
Street

Email marnie@teamjb.com

Tallahassee FL 32303
City State Zip

Reset Form

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 Chapter American College of Cardiology

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

830
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tiffany McCaskill Henderson

Phone 850 933 5928

Address (Senate)
Street

Email tiffany.henderson@heartorg

Tallahassee FL 32314
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: American Heart 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 846
INTRODUCER:	Banking and Insurance Committee and Senator DiCeglie
SUBJECT:	Risk Retention Groups
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Favorable**
3.	Thomas	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 846 amends s. 324.021, F.S., to provide that motor vehicle liability insurance coverage issued by a risk retention group operating in accordance with 15 U.S.C. ss. 3901 et seq., which conducts business in this state pursuant to ss. 627.943 or 627.944, F.S., satisfies the financial responsibility requirements of Florida's state motor vehicle law.

Risk retention groups sell insurance to eligible members, do not submit rate and form filings to state regulators, and are not members of state guaranty associations that manage claims if an insurer becomes insolvent. Members of a risk retention group must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations.

The bill does not impact state revenues or expenditures.

The bill has an effective date of July 1, 2024.

II. Present Situation:

Risk Retention Groups

Risk retention groups (RRGs) are liability insurance companies owned by its members. Membership is comprised of businesses with similar insurance needs that pool their risks and

form an insurance company, using a combination of state and federal laws under the auspices of the Federal Liability Risk Retention Act,[1] are treated as multi-state insurance companies and are subject to National Association of Insurance Commissioners accreditation standards.[2] Federal law treats risk retention groups (RRGs) – which may sell insurance only to eligible members – differently than traditional insurance companies. Members of a RRG must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations.[3]

Authorized insurers must be licensed in every state in which they operate and the domicile state serves as the primary regulator. RRGs need to be licensed as a liability insurer in only one state; further, those that were chartered prior to 1985 may operate under the laws of Bermuda or the Cayman Islands.[4] State regulators may require RRGs to comply with state laws relating to claim settlement and false or fraudulent acts, pay premium taxes, register with the designated state agent for service of process, and submit to financial exams if such exam has not been completed by the state in which the RRG is chartered.[5]

States may not require a RRG to participate in any insolvency guaranty association.[6] However, states may require notice insurance provided by a RRG is not protected by an insolvency guaranty association.[7] Unlike authorized insurers, RRGs do not submit rate and form filings with a state regulator. Instead, RRGs apportion risk among their members; thus, rates are based on an actuarial analysis of the membership and policies can be tailored to suit the needs of the membership.[8]

RRGs may only provide liability insurance. Federal and state law defines liability insurance as coverage for liability for damages to persons or property arising out of any business, trade, product, professional service, premise, operation, or activity of a state or local government.[9] Liability insurance does not include an employer's liability to its employees; thus, RRGs may not issue workers' compensation insurance policies to their members.[10]

RRGs may operate in Florida if they obtain a certificate of authority as a liability insurer, or are licensed in another state and provide a copy of their business plan and annual financial statement to the Office of Insurance Regulation (OIR) and designate the Chief Financial Officer (CFO) as

[1] National Association of Insurance Commissioners (NAIC), *Risk Retention Groups*, Risk Retention Groups (naic.org) (last visited January 23, 2024). 15 U.S.C. Ch. 65: Liability Risk Retention. *available at*: https://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter65&edition=prelim (last visited Jan. 23, 2024).
[2] NAIC, *Risk Retention Groups*, Risk Retention Groups (naic.org) (last visited January 23, 2024).
[3] 15 U.S.C. § 3901(a)(4)(F) and s. 627.942(9), F.S.
[4] 15 U.S.C. § 3901(a)(4) and s. 627.942(9), F.S.
[5] 15 U.S.C. § 3902(a)(1).
[6] 15 U.S.C. § 3902(a)(2).
[7] 15 U.S.C. § 3902(a)(1).
[8] National Association of Insurance Commissioners, *Risk Retention Groups*, Risk Retention Groups (naic.org) (last visited January 23, 2024).
[9] 15 U.S.C. 3901(a)(2)(A) and s. 627.942(4), F.S.
[10] 15 U.S.C. 3901(a)(2)(B) and s. 627.942(9)(g), F.S.

agent for service of process.[11] According to the OIR, 146 RRGs are licensed in a state other than Florida and are registered to do business in Florida.[12]

RRGs licensed in Florida pay the same premium taxes as Florida-licensed insurers.[13] RRGs registered to operate in Florida but licensed in another state pay the same premium taxes as surplus lines insurers that are allowed to sell lines of insurance that consumers cannot obtain from Florida-licensed insurers.[14] All RRGs operating in Florida must use agents who are licensed and appointed in Florida.[15]

Confusion exists as to whether "a non-domiciliary or foreign RRG registered in the State is indeed deemed an 'insurer authorized to do business in the state' consistent with" federal law.[16] This confusion has been an issue especially for Florida trucking companies seeking to prove financial responsibility under Florida's motor vehicle law. However, in a memorandum written in 2012 by the General Counsel of the Department of Highway Safety and Motor Vehicles (DHSMV), a RRG:

> …can be accepted as an insurer writing commercial vehicle coverage for vehicles owned or operated by their members, so long as the policy does not extend to coverage for members who own a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle, as set forth in s. 324.031 Fla. Stats.[17]

Presently, there are 40 RRGs authorized to sell commercial automobile liability insurance to its members.[18]

Florida's Motor Vehicle Financial Responsibility Law

Chapter 324, F.S., sets forth the financial responsibility laws for owners or operators of motor vehicles in Florida, whether they be used for personal or commercial purposes. Generally, a motor vehicle owner or operator is required to insure against losses from liability for bodily injury, death, and property damage by either purchasing auto insurance from an insurance carrier

[11] Sections 627.943 and 627.944, F.S.
[12] Florida Office of Insurance Regulation, *Active Company Search*, https://companysearch.myfloridacfo.gov/ (last visited January 23, 2024).
[13] Section 627.943(4), F.S. Pursuant to s. 624.509, F.S., premium taxes (typically 1.75 percent of the premium) are collected by the licensed insurer and paid to the Department of Revenue on or before March 1 of each year.
[14] Section 627.944 (3), F.S. Pursuant to s. 626.932, F.S., premium taxes (4.94 percent of the premium) are collected by the licensed insurance agent and paid to the Department of Financial Services on a quarterly basis; premiums are also reported to the Florida Surplus Lines Service Office (FSLSO) which oversees the reporting requirements of eligible surplus lines insurers. The FSLSO website is *available at:* https://www.fslso.com/.
[15] Sections 627.943(1) and 627.944(12), F.S.
[16] Email to Staff Director, Senate Committee on Banking and Insurance, James Knudson, from Joseph E. Deems, Executive Director, National Risk Retention Association, November 1, 2023 (on file with the Senate Committee on Banking and Insurance).
[17] Memorandum to Julie Gentry, Chief of Motorist Compliance, DHSMV, from Stephen D. Hurm, General Counsel, DHSMV, May 25, 2012 (on file with the Senate Committee on Banking and Insurance).
[18] Florida Office of Insurance Regulation, *Active Company Search*, https://companysearch.myfloridacfo.gov/ (last visited January 23, 2024).

authorized by the OIR to do business in Florida;[19] or obtaining a certificate of self-insurance from the DHSMV after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.[20]

The OIR licenses insurance carriers and reviews policy contracts and premium rates of its licensees.[21] An insurance carrier may not issue an auto insurance policy in Florida unless the policy includes coverages for both personal injury and property damage.[22]

The DHSMV administers the Financial Responsibility Law[23] by requiring all licensed insurance companies to provide electronic notification of all policies issued or cancelled.[24] Vehicle owners must show proof of personal injury protection and property damage liability coverage to register a vehicle,[25] and must provide proof of bodily injury liability coverage if they are involved in an accident and charged with a moving violation.[26] A vehicle owner who fails to maintain continuous coverage may have his or her driver's license and registration suspended.[27]

Required coverages vary based on the use of a motor vehicle. For individual motorists, the law requires $10,000 in personal injury protection and $10,000 for property damage.[28] If a driver has been convicted of driving under the influence of alcohol, the motorist must maintain liability coverage of $100,000 for bodily injury to, or death of, one person in any one crash and in the amount of $300,000 due to bodily injury to, or death of, two or more persons in any one crash and in the amount of $50,000 because of property damage in any one crash per accident, for three years after the license is reinstated.[29]

For leased motor vehicles, the lessor is not liable for the actions of a lessee so long as the lease requires $100,000/$300,000 bodily injury liability and $50,000 property damage liability or not less than $500,000 combined property damage and bodily injury liability.[30] For-hire passenger vehicles like taxicabs and limousines must have bodily injury liability coverage of $125,000 per person and $250,000 per occurrence, and $50,000 property damage coverage.[31]

Commercial motor vehicles operating on Florida's highways are subject to state and federal regulations related to size and weight limits, safety standards, and registration requirements. Commercial vehicles which have a gross vehicle weight of 10,001 pounds or more, and engage in interstate commerce or haul hazardous materials, are subject to federal law, where required

[19] Section 324.021(8), F.S.
[20] Sections 324.161 and 324.171, F.S. *See* Florida Department of Highway Safety and Motor Vehicles, Self-Insurance, https://www.flhsmv.gov/insurance/self-insurance/firm/ (last visited January 24, 2024).
[21] Sections 624.404, 627.062, 627.410, and 627.4102, F.S.
[22] Section 627.7275, F.S.
[23] Ch. 324, F.S.
[24] Sections 324.0221, 324.252, F.S., and Rules 15A-3.007, and 15A-3.012, F.A.C.
[25] Sections 324.022, 324.023, F.S., and Rule 15A-3.006, F.A.C.
[26] Section 324.021, F.S. *See* Florida Highway Safety and Motor Vehicles, *Florida Insurance Requirements*, https://www.flhsmv.gov/insurance/ (last visited January 24, 2024).
[27] Section 324.0221, F.S.
[28] Sections 324.021(7), 324.022, and 627.736, F.S.
[29] Section 324.023, F.S.
[30] Section 324.021(9), F.S.
[31] Sections 324.032, F.S.

coverages range from $750,000 to five million dollars.[32] Commercial vehicles that weigh 26,001 pounds or more, operate only within Florida, and do not transport hazardous materials are subject to Florida law, where required coverages range from $50,000 to $300,000.[33]

When the owner or operator of a motor vehicle purchases liability insurance to satisfy Florida's Financial Responsibility Law, the policy must be issued by an insurance company authorized to do business in Florida.[34] When an owner or operator self-insures a vehicle or fleet of vehicles, the owner or operator must obtain a certificate of self-insurance from the DHSMV.[35]

III. Effect of Proposed Changes:

The bill amends s. 324.021, F.S., to provide motor vehicle liability insurance coverage issued by a risk retention group operating in accordance with 15 U.S.C. ss. 3901 et seq., which conducts business in this state pursuant to ss. 627.943 or 627.944, F.S., satisfies the financial responsibility requirements of state motor vehicle law. The change should eliminate any existing confusion as to whether these RRGs are permitted to sell commercial motor vehicle liability coverage to its members.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[32] 49 CFR § 387.9.
[33] Sections 207.002(1), 320.01(25), and 627.7415, F.S.
[34] Section 324.021(8), F.S.
[35] Section 324.171, F.S.

B. Private Sector Impact:

The bill may end the confusion regarding the ability of RRGs to offer commercial motor vehicle liability insurance to its members. The bill may benefit members of RRGs who are able to buy their motor vehicle policies through the group at a lower rate.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 324.021of 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 Banking and Insurance Committee on January 16, 2024:
The committee substitute removes the entire substance of the bill and amends s. 324.021, F.S., to provide that motor vehicle insurance coverage issued by risk retention groups operating under federal law, and conducting business in the state, satisfies the financial responsibility requirements of Florida motor vehicle law.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator DiCeglie

597-02155-24 2024846c1

A bill to be entitled

An act relating to risk retention groups; amending s. 324.021, F.S.; revising the definition of the term "motor vehicle liability policy" to include policies of liability insurance issued by certain risk retention groups; providing an effective date.

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

Section 1. Subsection (8) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(8) MOTOR VEHICLE LIABILITY POLICY.—Any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to s. 324.031, insuring such owner or operator against loss from liability for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of s. 324.151, issued by any insurance company authorized to do business in this state, including, but not limited to, a risk retention group operating in accordance with 15 U.S.C. ss. 3901 et seq. which conducts business in this state pursuant to s. 627.943 or s. 627.944. The owner, registrant, or operator of a motor vehicle is exempt from providing such proof

597-02155-24 2024846c1

of financial responsibility if he or she is a member of the United States Armed Forces and is called to or on active duty outside this state or the United States, or if the owner of the vehicle is the dependent spouse of such active duty member and is also residing with the active duty member at the place of posting of such member, and the vehicle is primarily maintained at such place of posting. The exemption provided by this subsection applies only as long as the member of the armed forces is on such active duty outside this state or the United States and the owner complies with the security requirements of the state of posting or any possession or territory of the United States.

Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 896
INTRODUCER:	Fiscal Policy Committee and Senator Martin
SUBJECT:	Health Care Practitioners and Massage Therapy
DATE:	February 16, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Favorable**
2.	Gerbrandt	McKnight	AHS	**Favorable**
3.	Rossitto-Van Winkle	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 896 expands the Department of Health's (DOH) authority to suspend the license of a massage therapist or massage establishment when an employee of the establishment is arrested for committing or attempting, soliciting, or conspiring to commit certain offenses, such as prostitution, kidnapping, or human trafficking. The bill authorizes the State Surgeon General to suspend the license of any licensee upon probable cause that the licensee has committed sexual misconduct.

The bill expressly prohibits sexual activity in a massage establishment and authorizes the DOH and law enforcement to investigate massage establishments for new required and prohibited acts to assist in identifying persons who may be engaging in human trafficking.

The bill appropriates eight full-time equivalent positions and the sums of $925,080 in recurring and $108,952 in nonrecurring funds from the Medical Quality Assurance Trust Fund to the DOH for the purpose of implementing the bill.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Massage Therapy Practice

Chapter 480, F.S., is the "Massage Therapy Practice Act" and governs the practice of massage therapy in Florida. A massage therapist is a health care practitioner licensed under ch. 480, F.S. The Board of Massage Therapy (Board) is within the Department of Health (DOH) and regulates the practice of massage therapy.[1] As of June 30, 2023, there were 55,409 total licensed massage therapists and establishments.[2]

Massage therapy is the manipulation of the soft tissues of the human body with the hands, feet, arms, or elbow, whether or not the manipulation is aided by hydrotherapy, and includes colonic irrigation, thermal therapy, the use of any electrical or mechanical device, or the application of chemical or herbal preparations to the human body.[3]

According to the DOH, in Fiscal Year 2022-2023, in Florida, there were 191 Board-approved licensed massage therapy schools, 34,515 in-state, active licensed massage therapists, and 8,966 massage establishments with active licenses.[4]

Massage Therapy Licensure

An individual seeking licensure as a massage therapist in Florida must:
- Submit an application and the appropriate licensing fee;
- Be at least 18 years of age or have a high school diploma or high school equivalency diploma;
- Submit to background screening and be found to not have been convicted or found guilty of, or to have pled nolo contendere to, a specific list of crimes; and
- Meet specific education and training requirements, as discussed below.[5]

Massage Establishment Licensure

A massage establishment is the premises wherein a massage therapist practices massage therapy.[6] A massage establishment must be licensed by the Board and adhere to rules set by the Board regarding facilities, personnel, safety and sanitation requirements, financial responsibility, and insurance coverage.[7] Massage establishments must be licensed to operate legally.[8]

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[1] Section 480.035, F.S.
[2] Department of Health, House Bill 197 2024 Agency Legislative Bill Analysis (Oct. 24, 2023) (On file with the Senate Committee on Health Policy).
[3] Section 480.033, F.S.
[4] Department of Health, Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2022-2023*, pgs. 27 and 31, *available at* https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html (last visited Feb. 16 2024).
[5] Section 480.041, F.S. *See also*, Fla. Admin. Code R. 64B7-25, (2023).
[6] Section 480.033(7), F.S.
[7] Section 480.043, F.S.
[8] *Id*.

The Board requires the following to be met before a massage establishment license may be issued:[9]

- A completed application and appropriate licensing fee;[10]
- A DOH inspection;[11] and
- Proof of property damage and bodily injury liability insurance coverage.[12]

The application includes background screening of the establishment owner and requires the identification of a designated establishment manager (DEM).[13] A DEM must be a licensed massage therapist who holds a clear and active license without restriction. The DEM is responsible for the operation of a massage establishment and must be designated the manager by the rules or practices at the establishment.[14]

Massage establishment licenses may not be transferred from a licensee to another individual or entity.[15] Board approval is required for a massage establishment to move locations or change names.[16]

A proposed massage establishment may be denied a license for failing to meet the standards adopted by the Board, or if the owner or DEM has been convicted of, or plead guilty to, or plead nolo contendere to, a felony or misdemeanor relating to any of the following offenses:[17]

- Prostitution;[18]
- Kidnapping;[19]
- False imprisonment;[20]
- Luring or enticing a child;[21]
- Human trafficking or smuggling;[22]
- Sexual battery;[23]
- Female genital mutilation;[24]
- Lewd or lascivious offenses in the presence of a minor, elderly, or disabled person;[25] or

[9] Fla. Admin. Code R. 64B7-26.002, (2023).
[10] *See* Board of Massage Therapy, *Application for Massage Establishment License*. Available at https://floridasmassagetherapy.gov/applications/app-bus-original-mt.pdf (last visited Feb. 16, 2024).
[11] The inspection must demonstrate that the proposed massage establishment is to be used for "massage" as defined in Section 480.033(3), F.S., and that the proposed massage establishment is in compliance with chs. 456 and 480, F.S., and related rules. *See* Fla. Admin. Code R. 64B7-26.002, (2023).
[12] Fla. Admin. Code R. 64B7-26.002, (2023).
[13] *See* Board of Massage Therapy, *Application for Massage Establishment License*. Available at https://floridasmassagetherapy.gov/applications/app-bus-original-mt.pdf (last visited Feb. 16, 2024).
[14] Section 480.033(6), F.S.
[15] Section 480.043(9), F.S.
[16] *Id.*
[17] Section 480.043, F.S.
[18] Chapter 796, F.S.
[19] Section 787.01, F.S.
[20] Section 787.02, F.S.
[21] Section 787.025, F.S.
[22] Sections 787.06 and 787.07, F.S.
[23] Section 794.011, F.S.
[24] Section 794.08, F.S.
[25] Sections 800.004 and 825.1025(2)(b), F.S.

- Obscene or sexual acts involving a minor.[26]

The DOH may investigate the proposed massage establishment based on the application contents.[27] If the DOH determines that the proposed massage establishment fails to meet the standards adopted by the Board, the DOH must deny the application for licensure and provide the denial in writing with a list of reasons for the denial. The establishment may correct the recorded deficiencies and reapply for licensure.[28]

Professional Discipline of Massage Therapists and Massage Establishments

It is the responsibility of the Board to discipline its licensees regulated under ch. 480, F.S., for any acts that violate ss. 480.041, 480.043, 480.0485, 480.046, and 456.072, F.S., or ch. 64B7, Florida Administrative Code. In doing so, it must issue an order imposing appropriate penalties on the massage therapist or massage establishment within the ranges recommended in the disciplinary guidelines of ss. 456.072(2) and 480.046, F.S., and ch. 64B7, Florida Administrative Code, after consideration of the listed aggravating and mitigating factors. Discipline may include any combination of the following:

- Letter of concern or guidance;
- Reprimand;
- Conditional license;
- Probation;
- Suspension of license;
- Revocation of license; and/or
- Fines.

During Fiscal Year 2022-2023, 229 administrative complaints were filed related to massage therapists and massage establishments.[29] Of those, 70 were related to sexual misconduct.[30]

DOH Emergency Action Orders

The DOH is authorized under s. 456.074, F.S., to immediately suspend the license of any health care practitioner who has pleaded guilty, or nolo contendere to, or has been convicted of, any of the following offenses:

- Felony Medicare or Medicaid fraud under ch. 409, F.S.;
- Felony fraud under ch. 817, F.S.;
- Felony drug offenses under ch. 893, F.S., and equivalent charges under federal law;
- Misdemeanors or felonies under federal law relating to the Medicaid program;
- Felonies under s. 784.086, F.S., relating to reproductive battery; and
- Felonies under ch. 782, F.S., relating to homicide.

[26] Section 827.071 and ch. 847 F.S.
[27] Section 480.043(5), F.S.
[28] Section 480.043(6), F.S.
[29] Department of Health, House Bill 197 2024 Agency Legislative Bill Analysis (Oct. 24, 2023) (On file with the Senate Committee on Health Policy).
[30] *Id.*

The DOH may only issue an emergency suspension order (ESO), an emergency restriction order (ERO), or an order limiting a practitioner's license if the procedure leading to the order was fair under the circumstances and meets the following criteria:

- The procedure provided at least the same procedural protection as is given by other statutes, the State Constitution, or the U.S. Constitution;
- The DOH took only the action necessary to protect the public health, safety, and welfare under the emergency procedure; and
- The DOH stated, in writing, with particularity, at the time of or before the emergency action, the specific facts and reasons for finding that the practitioner or regulated facility presented an *immediate danger to the public health, safety, or welfare* and its reasons for concluding that the procedure used was fair under the circumstances.[31]

The State Surgeon General, or his or her designee, may issue the emergency action and is required to conduct a proceeding to make a finding that a healthcare practitioner or regulated facility presents an immediate danger to the public health or safety and that the least restrictive means of protecting the public welfare is an action against the health care practitioner's or facility's license.[32]

Emergency Actions Specific to Massage Therapist and Massage Establishment License

The DOH under s. 456.074(4), F.S., is required to issue an ESO of the license of a massage therapist or massage establishment when a therapist, or a person with any ownership interest in a massage establishment, has been convicted, or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, prostitution or related acts under s. 796.07, F.S., or a felony under any of the following or similar provisions in another jurisdiction:[33]

- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025, F.S., relating to luring or enticing a child;
- Section 787.06, F.S., relating to human trafficking;
- Section 787.07, F.S., relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery;
- Section 794.08, F.S., relating to female genital mutilation;
- Former s. 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Former s. 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, F.S., relating to deriving support from the proceeds of prostitution;
- Section 796.07(4)(a)3, F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S., relating to prohibiting prostitution and related acts;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 825.1025(2)(b), F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;

[31] Section 120.60(6), F.S.
[32] Sections 456.073(8) and 120.60(6), F.S.
[33] Section 456.074(4), F.S.

- Section 847.0133, F.S., relating to the protection of minors;
- Section 847.0135, F.S., relating to computer pornography;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor by electronic device or equipment; and
- Section 847.0145, F.S., relating to the selling or buying of minors.

Without a conviction or the entry of a guilty or nolo contendere plea by the licensee, the DOH cannot issue an ESO.

The DOH is required to annually report to the Legislature the total number of administrative complaints and a description of disciplinary actions taken against healthcare professionals and establishments licensed and regulated by the DOH.[34] Such figures are required to be categorized by profession but not by the cause for the complaint or disciplinary action, such as sexual misconduct or failure to maintain a DEM.

Massage establishments are also required to maintain a DEM on file with DOH as a condition of their licensure. The DOH is authorized to issue an ESO to an establishment that fails to identify a new DEM within ten days of terminating the previous DEM.[35]

Human Trafficking

Human trafficking is a form of modern-day slavery involving the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person to exploit that person.[36] Human trafficking can affect individuals of any age, gender, or nationality; however, some people are more vulnerable than others. Significant risk factors include recent migration or relocation, substance abuse, mental health concerns, and involvement in the child welfare system.[37]

Victims of human trafficking are often subjected to force, fraud, or coercion for sexual exploitation or forced labor.[38] It is estimated that at any given time in 2021, approximately 27.6 million people were engaging in forced labor.[39] In 2021, the National Human Trafficking Hotline[40] (hotline) identified 16,710 trafficking victims in the U.S., of which 1,253 were in

[34] Section 456.026, F.S. *See* Department of Health, Division of Medical Quality Assurance Annual Report and Long-Range Plan (2023). available at https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/MQAAnnualReport2022-2023.pdf (last visited Feb. 16, 2024).
[35] Section 480.043(12), F.S.
[36] Section 787.06, F.S.
[37] U.S. Department of Health and Human Services, Administration of Children and Families, National Human Trafficking Hotline. *Human Trafficking: What Human Trafficking is, and isn't*. Available at https://humantraffickinghotline.org/en/human-trafficking (last visited Feb. 16, 2024).
[38] *Id.*
[39] International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Sep. 2022). Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (last visited Feb. 16, 2024).
[40] The National Human Trafficking Hotline is a free service to connect victims and survivors of sex and labor trafficking with services and supports to find help and safety. The Hotline also receives tips about potential situations of sex and labor trafficking and facilitates reporting that information to the appropriate authorities. *See also*, National Human Trafficking Hotline, *About Us*, available at https://humantraffickinghotline.org/en/about-us (last visited Feb. 16, 2024).

Florida.[41] However, these figures do not reflect the true scope and scale of the issue which cannot be easily quantified due to the underground nature of the issue. An analysis of data collected by the hotline showed that approximately six percent of reported victims in 2021 were associated with illicit massage, health, and beauty services.[42]

Illicit Massage Businesses

An illicit massage business (IMB) is an establishment that puts on the façade of a legitimate massage business to facilitate commercial sex services. As of 2023, *The Network,* a private I.R.S. 502(c)(3) non-profit, working to counter IMBs, estimated more than 13,000 IMBs were operating in all 50 states. As a whole, this illicit industry generates over $5 billion per year in revenue.[43] IMBs are considered one of the top venues for sex trafficking involving adults and represented the largest group of citizen calls to the hotline in 2019.[44]

Law Enforcement Response to IMBs

Florida has implemented several law enforcement and regulatory measures to stop the operation of IMBs without interfering with legitimate massage establishments.

Traditional tactics such as sting operations, undercover work, and reactive investigations are still relied on heavily for addressing human trafficking and IMBs, though these tactics for controlling crime have proven largely ineffective in reducing the presence of IMBs and their impact on victims of human trafficking. These tactics have been ineffective in holding traffickers accountable and decreasing the risk of victimization as the sting and undercover methods and massage therapy create unique issues for law enforcement.[45]

Law enforcement has also attempted to prosecute IMBs as a public nuisance and sought injunctive relief.[46] When such a nuisance exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county where the nuisance allegedly exists, may bring a nuisance abatement action to enjoin the nuisance, the person maintaining it, and the owner or agent of the premises where the nuisance is located.[47] Such actions may result in a permanent injunction requiring the establishment to cease operations or abate any such nuisance.

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[41] U.S. Department of Health and Human Services, Administration of Children and Families, National Human Trafficking Hotline, *National Statistics (2021)*. Available at https://humantraffickinghotline.org/en/statistics (last visited Feb. 16, 2024).
[42] U.S. Department of Health and Human Services, Administration of Children and Families, National Human Trafficking Hotline, *Polaris Analysis of 2021 Data from the National Human Trafficking Hotline*. Available at https://polarisproject.org/wp-content/uploads/2020/07/Polaris-Analysis-of-2021-Data-from-the-National-Human-Trafficking-Hotline.pdf (last visited Feb. 16, 2024).
[43] The Network, *What is the Illicit Massage Industry?*Available at https://www.thenetworkteam.org/research/what-is-the-illicit-massage-industry (last visited Feb. 16, 2024). The Network is an intelligence driven I.R.S. 501(c)(3) non-profit counter human traffic organization based in northern Virginia that works with partners across the U.S. with diverse strengths.
[44] de Vries, I. (2020). Crime, place, and networks in the age of the internet: The case of online-promoted illicit massage businesses. Northeastern University. Available at https://repository.library.northeastern.edu/files/neu:m046sd37z/fulltext.pdf (last visited Feb. 16, 2024).
[45] Vries, I. de, & Farrell, A. (2022). *Explaining the Use of Traditional Law Enforcement Responses to Human Trafficking Concerns in Illicit Massage Businesses*. Justice Quarterly, available at https://www.tandfonline.com/doi/epdf/10.1080/07418825.2022.2051587?needAccess=true (last visited Feb. 16, 2024).
[46] Section 823.05, F.S.
[47] Section 60.05, F.S.

Massage establishments may also be declared a public nuisance if they are operating outside of legal hours, serving as a person's principal domicile,[48] or are unable to provide the required identification and licensure documents upon the request of a law enforcement officer or DOH investigator.[49]

Administrative Response to IMBs

Florida has implemented several regulatory measures to combat the operation of IMBs. These regulations include:

- Massage establishments are not authorized to operate between 12:00 a.m. and 5:00 a.m.;[50]
- Sexual misconduct[51] is explicitly prohibited in massage establishments;[52]
- Advertisements must include the license number of the individual massage therapist or establishment being advertised;[53]
- Persons employed in a massage establishment must be able to produce a government-issued identification upon request of a DOH inspector or law enforcement investigator;[54] and
- Massage establishments are required to have a procedure for reporting suspected human trafficking and conspicuously post a sign with the relevant procedures.[55]

III. Effect of Proposed Changes:

Section 1 amends s. 456.026, F.S., to expand the Department of Health's (DOH) reporting requirements regarding massage therapists and establishments. Current law requires the DOH to report the number of complaints, investigations, and disciplinary actions taken for all the DOH-regulated professions, but the basis of the cause of action is not required to be reported. The bill requires the DOH to separately categorize complaints, investigations, probable cause findings, and disciplinary actions against massage therapists and establishments where the following specific statutory violations are being alleged:

- No designated establishment manager (DEM);
- No procedure for reporting suspected human trafficking to the hotline or a local law enforcement agency;
- Sexual activity in a massage establishment;
- Window violation;
- Clothing violation;
- Employment records violation;
- License display violation;
- Medical records violation;
- Advertising violation;
- Domicile, shelter, harbor, sleeping or napping violation;

[48] *See* s. 480.0475, F.S.
[49] *See* s. 480.0535, F.S.
[50] Section 480.0475, F.S.
[51] Fla. Admin. Code R. 64B7-26.010, (2023), specifies that the statutory prohibition of sexual misconduct extends to sexual activity occurring within any massage establishment.
[52] Section 480.0485, F.S.
[53] Section 480.0465, F.S.
[54] Section 480.0535, F.S.
[55] Section 480.043, F.S.

- Sexual misconduct violation; and
- Document violation.

Section 2 amends s. 456.074, F.S., to expand the DOH authority to suspend the license of a massage therapist and massage establishment when an employee of the establishment is arrested for committing or attempting, soliciting, or conspiring to commit any offense listed in 456.074, F.S, such as prostitution, kidnapping, or human trafficking.

The bill authorizes the State Surgeon General to suspend the license of any licensee upon probable cause that the licensee has committed sexual misconduct, and that the violation constitutes an immediate danger to the public.

Section 3 amends s. 480.033, F.S., to define the following terms for the practice of massage therapy and massage establishments:

- "Advertising medium," which includes:
  - Any newspaper;
  - Airwave or computer transmission;
  - Telephone directory listing, other than an in-column listing consisting only of a name physical address, and telephone number;
  - Business card;
  - Handbill;
  - Flyer;
  - Sign, other than a building directory listing all building tenants and their room or suite numbers; or
  - Any other form of written or electronic advertisement.
- "Employee," which includes any person, independent contractor, or lessee of the massage establishment, whose duties include any aspect of the massage establishment, including, cooking and cleaning, with or without compensation. The term does not include persons exclusively engaged in the repair or maintenance of the massage establishment or the delivery of goods to the establishment.
- "Sexual activity" according to parameters provided in the bill.

The bill amends the definition of designated establishment manager (DEM), to include an acupuncturist, medical or osteopathic physician, or chiropractor, who holds a clear and active license without restrictions as persons who may act as a DEM. Currently, only a massage therapist may act as a DEM.

Section 4 amends s. 480.035, F.S., to change the Board of Massage Therapy quorum requirements from four members to a majority of members.

Section 5 amends s. 480.043, F.S., to provide the DOH and law enforcement the means to effectively identify persons engaging in human trafficking at massage establishments. Specifically, the bill:

- Expressly prohibits sexual activity in a massage establishment;

- Requires the outside windows in the massage establishment's reception area to allow for at least 35 percent light penetration and no more than 50 percent of the outside windows may be obstructed by signage, blinds, curtains, or other obstructions;
- Requires a sign on the front window that includes the name and license number of the massage establishment and the telephone number that has been provided to the DOH as part of the licensure application, with an exception for a massage establishment:
  - Within a public lodging establishment; or
  - Located within a county or municipality that has an ordinance that prescribes requirements related to business window light penetration or signage limitations if compliance would result in noncompliance with such ordinance;
- Requires all employees at the massage establishment to be fully clothed and the clothing be fully opaque and made of nontransparent material that does not expose the employee's genitalia, with an exception for employees of a public lodging establishment that is licensed as a clothing-optional establishment and chartered with the American Association for Nude Recreation;
- Requires a massage establishment to maintain a complete set of legible employment records in English or Spanish, which must include employees:
  - Start date;
  - Full legal name;
  - Date of birth;
  - Home address;
  - Telephone number;
  - Employment position; and
  - A copy of the employee's government identification.
- Requires a massage establishment to display a two-inch by two-inch photo for each employee, which, for massage therapists, must be attached to the massage therapist's license and include the employee's full legal name and employment position. A massage establishment within a public lodging establishment may satisfy this requirement by displaying the photos and required information in an employee break room or other room that is used by employees, but is not used by clients or patients;
- Requires a massage establishment to maintain a complete set of legible patient or client medical records in English or Spanish which must be maintained for one year after the last date of service or treatment, and include:
  - The date and time of the service or treatment;
  - The type of service or treatment provided;
  - The full legal name of the employee who provided the service or treatment; and
  - The full legal name, home address, and telephone number of the client or patient; and
- Requires an establishment to confirm the identification of a client or patient before any service or treatment is provided.

Except for the requirement that a massage establishment implement a procedure for reporting suspected human trafficking to the National Human Trafficking Hotline or a local law enforcement agency and post it in a conspicuous place in the establishment, the bill exempts acupuncturists, physician licensed ch. 458 or 459, F.S., and chiropractors who employ a massage therapist to perform massage therapy on their patients at their practice are exempt from requirements of s. 480.043, F.S.

The bill amends s. 823.05, F.S., to declare that a massage establishment found to have permitted sexual activity on the premises, or to have failed to maintain a complete set of client or patient medical records, in violation of s. 480.14(a) or (f), F.S., is a nuisance, and law enforcement may abate and enjoin the establishment under ss. 60.05 and 60.06, F.S.

Section 6 amends s. 480.0465, F.S., to require that advertisements by a massage therapist or massage establishment include the physical address of the establishment that was provided to the DOH. Massage establishments with more than five locations in Florida are exempt from this requirement.

Massage therapists, massage establishments, and employees of massage establishments are prohibited from advertising in any medium or website that expressly or implicitly advertises prostitution, escort, or other sexual services. The bill deletes the statutory clause allowing new massage establishments with pending licenses to advertise using the license number of a massage therapist.

Section 7 amends s. 480.0475, F.S., to prohibit the use of a massage establishment, unless zoned residential under a local ordinance, by any person as:
- A principle or temporary domicile;
- A shelter or a harbor; or
- Sleeping or napping quarters.

Section 8 amends s. 480.0535, F.S., to require DOH investigators to request valid government identification from all employees, in addition to massage therapists, in a massage establishment at the time of inspection. If an employee is unable to provide a valid form of government identification, the bill requires the DOH to notify a federal immigration office.

Section 9 amends s. 823.05, F.S., to expand the circumstances under which a massage establishment may be declared a public nuisance to include violating laws regarding the prohibition of sexual activity at a massage establishment and the maintenance of certain employment records.

Section 10 appropriates eight full-time equivalent positions and the sums of $925,080 in recurring and $108,952 in nonrecurring funds from the Medical Quality Assurance Trust Fund to the DOH for the purpose of implementing the bill.

Section 11 provides that the bill takes effect July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 896 appropriates eight full-time equivalent positions and the sums of $925,080 in recurring and $108,952 in nonrecurring funds from the Medical Quality Assurance Trust Fund to the DOH for the purpose of implementing the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.026, 456.074, 480.033, 480.035, 480.043, 480.0465, 480.0475, 480.0535, and 823.05.

IX. Additional Information:

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

CS by Fiscal Policy on February 15, 2024:
The committee substitute appropriates eight full-time equivalent positions and the sums of $925,080 in recurring and $108,952 in nonrecurring funds from the Medical Quality Assurance Trust Fund to the DOH for the purpose of implementing the bill.

B. Amendments:

None.

320058

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Martin) recommended the following:

Senate Amendment (with title amendment)

Between lines 420 and 421

insert:

Section 10. For the 2024-2025 fiscal year, eight full-time equivalent positions, with associated salary rate of 593,954, are authorized and the sums of $925,080 in recurring and $108,952 in nonrecurring funds from the Medical Quality Assurance Trust Fund are appropriated to the Department of Health for the purpose of implementing this act.

320058

11
12 ================ T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Between lines 59 and 60
15 insert:
16 providing appropriations and authorizing positions;

By Senator Martin

33-00545A-24 2024896__

A bill to be entitled

An act relating to health care practitioners and massage therapy; amending s. 456.026, F.S.; requiring that a certain annual report required of the Department of Health include specified data; amending s. 456.074, F.S.; requiring the department to immediately suspend the license of massage therapists and massage establishments under certain circumstances; requiring the department to suspend the license of any person or entity under its jurisdiction under certain circumstances; amending s. 480.033, F.S.; revising and providing definitions; amending s. 480.035, F.S.; revising quorum requirements for the Board of Massage Therapy; amending s. 480.043, F.S.; revising certain rules the board is required to adopt; prohibiting sexual activity and certain related activities in massage establishments; specifying prohibited conduct by establishment owners and employees; providing requirements for outside windows and signs in massage establishments; providing exceptions; providing employee dress code requirements, with an exception; requiring establishments to maintain certain employment records in English or Spanish; requiring that specified information be recorded before an employee may provide services or treatment; requiring massage establishments to conspicuously display a photo and specified information for each employee; requiring that such photos and information be displayed before

33-00545A-24 2024896__

an employee may provide services or treatment; providing for such requirements in massage establishments within public lodging establishments; requiring massage establishments to maintain customer and patient records for services and treatment provided in the massage establishment in English or Spanish; providing that medical records satisfy certain requirements; requiring massage establishments to maintain such records for a specified timeframe; requiring massage establishments to collect and record specified information; requiring massage establishments to confirm the identification of a customer or patient before providing services or treatment; amending s. 480.0465, F.S.; revising advertising requirements and prohibitions for massage therapists and massage establishments; amending s. 480.0475, F.S.; prohibiting establishments from being used as a temporary domicile for, to shelter or harbor, or as sleeping quarters for any person, with an exception; amending s. 480.0535, F.S.; requiring the department's investigators to request valid government identification from all employees while in a massage establishment; specifying additional documents a person operating a massage establishment must immediately present, upon request, to department investigators and law enforcement officers; requiring the department to notify a federal immigration office if specified persons in a massage establishment fail to provide valid government identification; amending

s. 823.05, F.S.; providing criminal penalties; providing an effective date.

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

Section 1. Section 456.026, Florida Statutes, is amended to read:

456.026 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—

(1) The department is directed to prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives by November 1 of each year. In addition to finances and any other information the Legislature may require, the report must ~~shall~~ include statistics and relevant information, profession by profession, detailing:

(a) ~~(1)~~ The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.

(b) ~~(2)~~ The number of complaints received and investigated.

(c) ~~(3)~~ The number of findings of probable cause made.

(d) ~~(4)~~ The number of findings of no probable cause made.

(e) ~~(5)~~ The number of administrative complaints filed.

(f) ~~(6)~~ The disposition of all administrative complaints.

(g) ~~(7)~~ A description of disciplinary actions taken.

(h) ~~(8)~~ A description of any effort by the department to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this chapter.

(i) ~~(9)~~ The status of the development and implementation of

rules providing for disciplinary guidelines pursuant to s. 456.079.

(j) ~~(10)~~ Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

(2) The report must separately categorize all complaints, investigations, probable cause findings, and disciplinary actions against a massage therapist or massage establishment licensed under chapter 480 related to a violation of each of the following:

(a) Section 480.043(12).

(b) Section 480.043(13).

(c) Section 480.043(14)(a)-(f).

(d) Section 480.0465.

(e) Section 480.0475.

(f) Section 480.0485.

(g) Section 480.0535.

Section 2. Subsection (4) of section 456.074, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(4) The department shall issue an emergency order suspending the license of a massage therapist and ~~or~~ establishment as those terms are defined in s. 480.033 ~~chapter 480~~ upon receipt of information that the massage therapist; the designated establishment manager as defined in s. 480.033; an employee of the establishment; ~~,~~ a person with an ownership interest in the establishment; ~~,~~ or, for a corporation that has

more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment has been arrested for committing or attempting, soliciting, or conspiring to commit, has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07 ~~s. 796.07(2)(a) which is reclassified under s. 796.07(7)~~ or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:

(a) Section 787.01, relating to kidnapping.

(b) Section 787.02, relating to false imprisonment.

(c) Section 787.025, relating to luring or enticing a child.

(d) Section 787.06, relating to human trafficking.

(e) Section 787.07, relating to human smuggling.

(f) Section 794.011, relating to sexual battery.

(g) Section 794.08, relating to female genital mutilation.

(h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.

(i) Former s. 796.035, relating to the selling or buying of minors into prostitution.

(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(k) Section 796.05, relating to deriving support from the proceeds of prostitution.

(l) Section 796.07(4)(a)3., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.

(s) Section 847.0145, relating to the selling or buying of minors.

(7) The department shall issue an emergency order suspending the license of any licensee upon a finding of the State Surgeon General that probable cause exists to believe that the licensee has committed sexual misconduct as described and prohibited in s. 456.063(1), or the applicable practice act, and that such violation constitutes an immediate danger to the public.

Section 3. Present subsections (1) through (6) and (7) through (12) of section 480.033, Florida Statutes, are redesignated as subsections (2) through (7) and (9) through (14), respectively, new subsections (1) and (8) and subsection (15) are added to that section, and present subsection (6) of that section is amended, to read:

480.033 Definitions.—As used in this act:

(1) "Advertising medium" means any newspaper; airwave or computer transmission; telephone directory listing, other than an in-column listing consisting only of a name, physical address, and telephone number; business card; handbill; flyer; sign, other than a building directory listing all building tenants and their room or suite numbers; or any other form of written or electronic advertisement.

(7)~~(6)~~ "Designated establishment manager" means a massage therapist; a health care practitioner licensed under chapter 457; or a physician licensed under chapter 458, chapter 459, or chapter 460 who holds a clear and active license without restriction, who is responsible for the operation of a massage establishment in accordance with the provisions of this chapter, and who is designated the manager by the rules or practices at the establishment.

(8) "Employee" means any person, including, but not limited to, independent contractors or lessees of a massage establishment, whose duties involve any aspect or capacity of the massage establishment, including, but not limited to, preparing meals and cleaning, regardless of whether such person is compensated for the performance of such duties. The term does not include a person who is exclusively engaged in the repair or maintenance of the massage establishment or in the delivery of goods to the establishment.

(15) "Sexual activity" means any direct or indirect contact by any employee or person, or between any employees or persons, with the intent to abuse, humiliate, harass, degrade, or arouse, or gratify the sexual desire of, any employee or person, or which is likely to cause such abuse, humiliation, harassment,

degradation, arousal, or sexual gratification:

(a) With or without the consent of the employee or person.

(b) With or without verbal or nonverbal communication that the sexual activity is undesired.

(c) With or without the use of any device or object.

(d) With or without the occurrence of penetration, orgasm, or ejaculation.

The term includes, but is not limited to, intentional contact with the genitalia, groin, femoral triangle, anus, buttocks, gluteal cleft, breast or nipples, mouth, or tongue and the intentional removal of any drape without specific written informed consent of the patient.

Section 4. Subsection (5) of section 480.035, Florida Statutes, is amended to read:

480.035 Board of Massage Therapy.—

(5) The board shall hold such meetings during the year as it may determine to be necessary, one of which shall be the annual meeting. The chair of the board shall have the authority to call other meetings at her or his discretion. A quorum of the board shall consist of not less than a majority of the current membership of the board ~~four members~~.

Section 5. Present subsection (14) of section 480.043, Florida Statutes, is redesignated as subsection (15), a new subsection (14) is added to that section, and subsection (3) and present subsection (14) of that section are amended, to read:

480.043 Massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies.—

(3) The board shall adopt rules governing the operation of

massage establishments and their facilities, employees ~~personnel~~, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(14) In order to provide the department and law enforcement agencies the means to more effectively identify persons engaging in human trafficking at massage establishments, the following apply:

(a) Sexual activity in a massage establishment is prohibited. An establishment owner or employee may not engage in or allow any person to engage in sexual activity in the establishment or use the establishment to make arrangements to engage in sexual activity in another location. Used or unused condoms are prohibited in a massage establishment.

(b) If there is an outside window or windows into the massage establishment's reception area, the outside window or windows must allow for at least 35 percent light penetration, and no more than 50 percent of the outside window or windows may be obstructed with signage, blinds, curtains, or other obstructions, allowing the public to see the establishment's reception area. A sign must be posted on the front window of the establishment that includes the name and license number of the massage establishment and the telephone number that has been provided to the department as part of licensure of the establishment. This paragraph does not apply to:

1. A massage establishment within a public lodging establishment as defined in s. 509.013(4).

2. A massage establishment located within a county or municipality that has an ordinance that prescribes requirements

related to business window light penetration or signage limitations if compliance with this paragraph would result in noncompliance with such ordinance.

(c) All employees within the massage establishment must be fully clothed, and such clothing must be fully opaque and made of nontransparent material that does not expose the employee's genitalia. This requirement does not apply to an employee, excluding a massage therapist, of a public lodging establishment as defined in s. 509.013(4) which is licensed as a clothing-optional establishment and chartered with the American Association for Nude Recreation.

(d) A massage establishment must maintain a complete set of legible records in English or Spanish, which must include each employee's start date of employment, full legal name, date of birth, home address, telephone number, and employment position and a copy of the employee's government identification required under s. 480.0535. All information required under this paragraph must be recorded before the employee may provide any service or treatment to a client or patient.

(e) A massage establishment must conspicuously display a 2 inch by 2 inch photo for each employee, which, for massage therapists, must be attached to the massage therapist's license. Such display must also include the employee's full legal name and employment position. All information required under this paragraph must be displayed before the employee may provide any service or treatment to a client or patient. A massage establishment within a public lodging establishment as defined in s. 509.013(4) may satisfy this requirement by displaying the photos and required information in an employee break room or

other room that is used by employees, but is not used by clients or patients.

(f) A massage establishment must maintain a complete set of legible records in English or Spanish which must include the date, time, and type of service or treatment provided; the full legal name of the employee who provided the service or treatment; and the full legal name, home address, and telephone number of the client or patient. Medical records may satisfy this requirement if the records include the specified information. A copy of the client's or patient's photo identification may be used to provide the full legal name and home address of the client or patient. Records required under this paragraph must be maintained for at least 1 year after a service or treatment is provided. All information required under this paragraph must be collected and recorded before any service or treatment is provided to a client or patient. The establishment must confirm the identification of the client or patient before any service or treatment is provided to the client or patient.

(15)~~(14)~~ Except for the requirements of subsection (13), this section does not apply to a practitioner ~~physician~~ licensed under chapter 457 or a physician licensed under~~,~~ chapter 458, chapter 459, or chapter 460 who employs a licensed massage therapist to perform massage therapy on the practitioner's or physician's patients at his or her ~~the physician's~~ place of practice. This subsection does not restrict investigations by the department for violations of chapter 456 or this chapter.

Section 6. Section 480.0465, Florida Statutes, is amended to read:

480.0465 Advertisement; prohibitions.—

(1) Each massage therapist or massage establishment licensed under this act shall include the number of the license in any advertisement of massage therapy services appearing in any advertising medium, including, but not limited to, ~~a~~ newspaper, airwave transmission, telephone directory, Internet, or other advertising medium. The advertisement must also include the physical address of the massage establishment and the telephone number that has been provided to the department as part of the licensing of the establishment. However, the inclusion of the physical address and telephone number is not required for an advertisement by a massage establishment whose establishment owner operates more than five locations in this state.

(2) A massage therapist, an establishment owner, an employee, or any third party directed by the establishment owner or employee may not place, publish, or distribute, or cause to be placed, published, or distributed, any advertisement in any advertising medium which states prostitution services, escort services, or sexual services are available.

(3) A massage therapist, an establishment owner, an employee, or any third party directed by the massage therapist, establishment owner, or employee may not place, publish, or distribute, or cause to be placed, published, or distributed, any online advertisement on any website known for advertising prostitution services, escort services, or sexual services ~~Pending licensure of a new massage establishment under s. 480.043(7), the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be~~

~~used in lieu of the license number for the establishment~~.

Section 7. Subsection (2) of section 480.0475, Florida Statutes, is amended to read:

480.0475 Massage establishments; prohibited practices.—

(2) A person operating a massage establishment may not use or permit the establishment to be used as a principal or temporary domicile for, to shelter or harbor, or as sleeping or napping quarters for any person unless the establishment is zoned for residential use under a local ordinance.

Section 8. Section 480.0535, Florida Statutes, is amended to read:

480.0535 Documents required while working in a massage establishment; penalties; reporting.—

(1) In order to provide the department and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, an employee ~~a person employed by a massage establishment~~ and any person performing massage therapy in a massage establishment ~~therein~~ must immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment. An investigator of the department must request valid government identification from all employees while in the establishment. A valid government identification for the purposes of this section is:

(a) A valid, unexpired driver license issued by any state, territory, or district of the United States;

(b) A valid, unexpired identification card issued by any state, territory, or district of the United States;

(c) A valid, unexpired United States passport;

(d) A naturalization certificate issued by the United States Department of Homeland Security;

(e) A valid, unexpired alien registration receipt card (green card); or

(f) A valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

(2) A person operating a massage establishment must:

(a) Immediately present, upon the request of an investigator of the department or a law enforcement officer:

1. Valid government identification while in the establishment.

2. A copy of the documentation specified in paragraph (1)(a) for each employee and any person performing massage therapy in the establishment.

3. A copy of the documents required under s. 480.043(14)(d) and (f).

(b) Ensure that each employee and any person performing massage therapy in the massage establishment is able to immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment.

(3) A person who violates ~~any provision of~~ this section commits:

(a) For a first violation, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) For a second violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) For a third or subsequent violation, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083,

or s. 775.084.

(4) The department shall notify a federal immigration office if a person operating a massage establishment, an employee, or any person performing massage therapy in a massage establishment fails to provide valid government identification as required under this section.

Section 9. Subsection (3) of section 823.05, Florida Statutes, is amended to read:

823.05 Places and groups engaged in certain activities declared a nuisance; abatement and enjoinment.—

(3) A massage establishment as defined in s. 480.033 which operates in violation of s. 480.043(14)(a) or (f), s. 480.0475, or s. 480.0535(2) is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06.

Section 10. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal policy
Committee

SB 896
Bill Number or Topic

Amendment Barcode (if applicable)

Name Katie Kelly

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Street

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Tall 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:
Collier County Sheriff's Ofc.

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/CS/SB 902
INTRODUCER:	Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Boyd
SUBJECT:	Motor Vehicle Retail Financial Agreements
DATE:	February 13, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	**Fav/CS**
2.	McKay	McKay	CM	**Fav/CS**
3.	Moody	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 902 substantially adopts portions of the Products Model Act by the Guarantee Asset Protection Alliance relating to vehicle value protection agreements, excess wear and use waivers, and guaranteed asset protection products.

Vehicle Value Protection Agreements

The bill creates the "Florida Vehicle Value Protection Agreements Act" (the "Florida Act"), which includes:

- Definitions of the terms: administrator, commercial transaction, consumer, contract holder, finance agreement, free look period, motor vehicle, provider, and vehicle value protection agreement.
  - A "vehicle value protection agreement" is a contractual agreement that provides a benefit toward either the reduction of some or all of the contract holder's current finance agreement deficiency balance, or the purchase or lease of a replacement motor vehicle upon the occurrence of an adverse event to the vehicle. The term does not include guaranteed asset protection products, and the product is not insurance.
- Requirements for offering vehicle value protection agreements ("VVPAs"), including provisions regarding restricting the type of charges, prohibiting certain conditional sales, utilizing an administrator, providing a copy of the agreement, prohibiting sales with duplicative coverage, and providing for financial security requirements;

- The nature, extent and type of disclosures required in VVPAs;
- Penalties for violating the Florida Act, which include noncriminal violations punishable by a fine per violation or in the aggregate for all "violations of a similar nature," which is defined in the bill; and
- Exemption of VVPAs offered in connection with a commercial transaction from the disclosure and penalty provisions of the Florida Act.

Excess Wear and Use Waivers

The bill authorizes a retail lessee to contract with a retail lessor for an "excess wear and use waiver," which is an agreement wherein the lessor agrees to cancel all or part of amounts that may become due under the lease because of excessive wear and use of a motor vehicle. The bill also prohibits the terms of the related motor vehicle lease from being conditioned upon the consumer's payment for any excess wear and use wavier, except such waiver may be discounted or given at no charge for the purchase of other noncredit-related goods. A lease agreement that includes an excess wear and use waiver must contain certain disclosures. An excess wear and use waiver is not insurance for purposes of the Florida Insurance Code.

Guaranteed Asset Protection Products

The bill amends the definition of "guaranteed asset protection product" ("GAP product"), which is an agreement by which a creditor agrees to waive a customer's liability for any debt that exceed the value of the collateral, to specify that a GAP product:

- May be with or without a separate charge;
- May cancel, rather than just waive, the customer's liability;
- Applies when a motor vehicle incurs total physical damage or is subject to an unrecovered theft; and
- May provide for a benefit that waives a portion of, or provides a customer with a credit toward, the purchase of a replacement vehicle.

The bill also amends the provisions regarding GAP products to:

- Provide for the refund of all unearned portions of the purchase price of a contract for a GAP product if the contract is terminated, unless the contract provides otherwise;
- Prohibit an entity from deducting more than $75 in administrative fees from a refund;
- Provide that a GAP product may be cancelable or noncancelable after a "free-look period" defined in the bill; and
- Provide that if a termination of a GAP product occurs for a specified reason, the entity may pay any refund directly to the holder or administrator, and deduct the refund amount from the amount owed under the retail installment contract except if such contract has been paid in full.

The bill has an effective date of October 1, 2024.

II. Present Situation:

Florida Motor Vehicle Sales Finance Laws

The Florida Motor Vehicle Retail Sales Finance Act[1] regulates sellers,[2] commonly referred to as auto dealers, who enter into retail installment contracts[3] with buyers[4] for the purchase or lease of a motor vehicle.[5] Except for certain businesses, such as banks or trust companies, sellers are required to obtain a license to operate in Florida.[6] A seller must submit an application, specified information, and a nonrefundable fee to the Office of Financial Regulation (OFR) to obtain the required license.[7]

Any person who willfully and intentionally violates any provision of s. 520.995, F.S., or engages in the business of a retail installment seller without a license is guilty of a misdemeanor of the first degree. Section 520.995, F.S., provides grounds for disciplinary action by the OFR when, for instance, there is failure to comply with any provision of ch. 520, F.S. Further, the OFR has authority to issue and serve upon any person a cease and desist order whenever such person is violating, has violated, or is about to violate any provision of ch. 520, F.S.,[8] or may impose an administrative fine not to exceed $1,000 for each violation that has occurred.[9]

Retail installment contracts must comply with several requirements and prohibitions, including, but not limited to, that the agreement must:

- Be in writing;[10]
- Contain a "Notice to the Buyer" which includes specified information;[11] and
- Contain other specified information, including the amount financed, finance charges, total amount of payments, total sale price, and payment details.[12]

Sellers must provide buyers with a separate written itemization of the amount financed.[13] Florida law contains several other provisions to protect the buyer, such as regulation on insurance rates,

[1] Sections 520.01-520.10, 520.12, 520.125, and 520.13, F.S.
[2] Section 520.02(11), F.S., defines "motor vehicle retail installment seller" or "seller" as a person engaged in the business of selling motor vehicles to retail buyers in retail installment transactions.
[3] "Retail installment contract" or "contract" is defined as an agreement, entered into in this state, pursuant to which the title to, or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract. Section 520.02(17), F.S.
[4] "Retail buyer" or "buyer" is defined as a person who buys a motor vehicle from a seller not principally for the purpose of resale, and who executes a retail installment contract in connection therewith or a person who succeeds to the rights and obligations of such person.
[5] *See* Ch. 520, F.S.
[6] Section 520.03(1), F.S.
[7] *Id.*
[8] Section 520.994(3), F.S.
[9] Section 520.994(4), F.S.
[10] Section 520.07(1)(a), F.S.
[11] Section 520.07(1)(b), F.S.
[12] Section 520.07(2), F.S.
[13] Section 520.07(3), F.S.

refunds for unearned insurance premiums, limits on the amount of delinquency charges a holder[14] may charge, and restrictions on when a contract may be signed with blank spaces.[15]

In conjunction with entering into any new retail installment contract or contract for a loan, a seller, a sales finance company,[16] or a retail lessor,[17] and any assignee of such an entity, may offer an optional guaranteed asset protection product ("GAP product") for a fee or otherwise.[18] Florida law defines a "guaranteed asset protection product" as:

> a loan, lease, or retail installment contract term, or modification or addendum to a loan, lease, or retail installment contract, under which a creditor agrees to waive a customer's liability for payment of some or all of the amount by which the debt exceeds the value of the collateral. Such a product is not insurance for purposes of the Florida Insurance Code. This subsection also applies to all guaranteed asset protection products issued before October 1, 2008.

A seller or any other authorized entity may not require the buyer to purchase a GAP product as a condition for making the loan. In order to offer a GAP product, a seller or any other authorized entity must comply with the following:[19]

- The cost of any GAP product must not exceed the amount of the loan indebtedness.
- Any contract or agreement pertaining to a GAP product must be governed by s. 520.07, F.S., relating to requirements and prohibitions as to retail installment contracts.
- A GAP product must remain the obligation of any person that purchases or otherwise acquires the loan contract covering such product.
- An entity providing GAP products must provide readily understandable disclosures that explain in detail eligibility requirements, conditions, refunds, and exclusions. The disclosures must explain that the purchase of the GAP product is optional, and must meet certain criteria regarding the language contained in it.
- An entity must provide a copy of the executed contract for the GAP product to the buyer.
- An entity may not offer a contract for a GAP product that contains terms giving the entity the right to unilaterally modify the contract unless:
  - The modification is favorable to the buyer and is made without any additional charge; or
  - The buyer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes in effect.
- If a contract for a GAP product is terminated, the entity must refund to the buyer any unearned fees paid for the contract unless the contract provides otherwise. A customer who receives the benefit of the GAP product is not entitled to a refund. The buyer must notify the entity of the event terminating the contract and request a refund within 90 days after the

[14] Section 520.02(8), F.S., provides that a "holder" of a retail installment contract means the retail seller of a motor vehicle retail installment contract or an assignee of such contract.
[15] Section 520.07, F.S.
[16] Section 520.02(19), F.S., defines "sales finance company" as a person engaged in the business of purchasing retail installment contracts from one or more sellers. The term includes, but is not limited to, a bank or trust company, if so engaged. The term does not include the pledge of an aggregate number of such contracts to secure a bona fide loan thereon.
[17] Section 521.003(8), F.S., defines "retail lessor" as a person who regularly engages in the business of selling or leasing motor vehicles and who offers or arranges a lease agreement for a motor vehicle. The term includes an agent or affiliate who acts on behalf of the retail lessor and excludes any assignee of the lease agreement.
[18] Section 520.07(11), F.S.
[19] *Id.*

terminating event. An entity may offer a buyer a nonrefundable contract for a GAP product only if the entity also offers the buyer a bona fide option to purchase a comparable contract that provides for a refund.

Ch. 520, F.S., does not contain any provisions on vehicle value protection agreements ("VVPAs") or excess wear and use waivers.

GAPA Products Model Act

The Guarantee Asset Protection Alliance ("GAPA") is an organization composed of insurance companies, lenders, and administrative services companies, and offers member benefits relating to, amongst other things, legislative efforts regarding GAP waivers.[20] On November 30, 2023, GAPA approved the latest Products Model Act (the "Revised Model Act") relating to motor vehicle financial protection,[21] such as VVPA and debt waivers.[22] Debt waivers include GAP products and excess wear and use waivers.[23] The Model Act relates to the GAP waiver only. The Revised Model Act, of which the bill adopts many portions, incorporates updated provisions on GAP waivers, provisions covering excess wear and use waivers, and provisions on VVPAs. According to GAPA, 15 states have enacted GAP waivers, 22 states have adopted the Model Act (including Florida), and 4 states have adopted the Revised Model Act.[24]

III. Effect of Proposed Changes:

Florida Vehicle Value Protection Agreements Act

Section 3 of the bill provides that ss. 520.151, F.S., to 520.156, F.S., may be cited as the "Florida Act."

Section 4 of the bill defines, for purposes of the Florida Vehicle Value Protection Agreements Act, the following terms:

- "Administrator" means the person who is responsible for the administrative or operational function of managing vehicle value protection agreements, including, but not limited to, the adjudication of claims or benefit requests by contract holders.
- "Commercial transaction" means a transaction in which the motor vehicle subject to the transaction is used primarily for business or commercial purposes.
- "Contract holder" means a person who is the purchaser or holder of a vehicle value protection agreement.
- "Finance agreement" means a loan, retail installment sales contract, or lease for the purchase, refinancing, or lease of a motor vehicle.

[20] The GAPA, *Membership*, available at: GAPA Membership Information (gapalliance.org) (last visited Jan. 29, 2024).
[21] The GAPA, *Motor Vehicle Financial Protection Products Model Act*, Nov. 30, 2023, p. 2, available at: GAPA-Model-Act-APPROVED-2023_11_30.pdf (gapalliance.org) (last visited Jan. 29, 2024) (hereinafter cited as the "Revised Model Act"). The Revised Model Act defines "Motor Vehicle Financial Protection Products" as agreements defined herein that protect a Consumer's financial interest in their current or future motor vehicle and include but are not limited to debt waivers and vehicle value protection agreements.
[22] The Revised Model Act.
[23] The Revised Model Act at p. 2-3.
[24] The GAPA, *Legislative Status of GAP Waiver*, May 2023, available at: PowerPoint Presentation (gapalliance.org) (last visited Jan. 29, 2024).

- "Free-look period" means the period of time, commencing on the effective date of the contract, during which the buyer may cancel the contract for a full refund of the purchase price. This period may not be shorter than 30 days.
- "Motor vehicle" has the same meaning as provided in s. 520.02, F.S., which defines the term as any device or vehicle, including automobiles, motorcycles, motor trucks, trailers, mobile homes, and all other vehicles operated over the public highways and streets of this state and propelled by power other than muscular power, but excluding traction engines, road rollers, implements of husbandry and other agricultural equipment, and vehicles which run only upon a track.
- "Provider" means a person that is obligated to provide a benefit under a VVPA. A provider may function as an administrator or retain the services of a third-party administrator.
- "Vehicle value protection agreement" includes a contractual agreement that provides a benefit towards either the reduction of some or all of the contract holder's current finance agreement deficiency balance or the purchase or lease of a replacement motor vehicle or motor vehicle services upon the occurrence of an adverse event to the motor vehicle, including, but not limited to, loss, theft, damage, obsolescence, diminished value, or depreciation. The term does not include GAP products defined in s. 520.02, F.S. Such a product is not insurance for purposes of the Florida Insurance Code.

All of the defined terms are substantially the same as the definitions contained in the Revised Model Act.[25]

Section 5 of the bill provides that a VVPA may be offered, sold, or given to consumers in compliance with the Florida Act. Notwithstanding any other law, any amount charged or financed for a VVPA must not be a finance charge or interest and must be separately stated in the finance agreement and in the VVPA. The extension or terms of credit, or the terms of the motor vehicle sale or lease may not be conditioned upon the consumer's payment for or financing of any charge for a VVPA, except a VVPA may be discounted or given at no charge in connection with the purchase of other noncredit-related goods or services. These provisions are substantially the same as the provisions in the Revised Model Act that apply to the requirements for offering motor vehicle financial protection products.[26]

The bill authorizes a provider to use an administrator or other designee to administer a VVPA. A consumer may not be sold a VVPA unless a copy of the agreement has been or will be provided to him or her at a reasonable time after such agreement is sold, or if coverage is duplicative of another VVPA sold to a person or duplicative of a GAP product. The Revised Model Act does not contain a provision that prohibits duplicative coverage. This provision was added to ensure consumers were not purchasing products that provide the same coverage.

Each provider must do one of the following:

- Insure[27] all of its VVPAs under a policy that pays or reimburses the contract holder in the event the provider fails to perform its obligations under the agreement. The Revised Model Act provides more details on the amount of minimum coverage that would be required. This

[25] The Revised Model Act at pp. 1-2, and 6
[26] The Revised Model Act at p. 2.
[27] The insurer must be licensed or otherwise authorized or eligible to do business in this state.

language was omitted to avoid inconsistencies with the Florida Insurance Code, but the overall intent and protection afforded under the Revised Model Act is maintained under this provision in the bill.

- Maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves may not be less than 40 percent of gross consideration received, less claims paid, on the sale of the VVPA for all in-force contracts in this state. The reserve must be placed in trust with the OFR and have a financial security deposit valued at not less than 5 percent of the gross consideration received, less claims paid, on the sale of the VVPAs for all VVPAs issued and in force in this state, but at least $25,000. The reserve account must consist of one of the following:
  - A surety bond issued by an authorized surety;
  - Securities of the type eligible for deposit by insurers as provided in s. 625.52, F.S.;
  - Cash; or
  - A letter of credit issued by a qualified financial institution.
- Maintain, or together with its parent corporation maintain, a net worth or stockholders' equity of $100 million and, upon request, provide the OFR with a copy of the provider's or the provider's parent company's Form 10-K or Form 20-F filed with the Securities and Exchange Commission ("SEC") within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which must show a net worth of the provider or its parent company of at least $100 million. If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial security requirement, the parent company must agree to guarantee the obligations of the provider relating to vehicle value protection agreements sold by the provider in this state.

A financial security requirement other than those described in this paragraph may not be imposed on VVPA providers.

Section 6 of the bill requires VVPAs to disclose in writing, in clear, understandable language, all of the following:

- The name and address of the provider, contract holder, and administrator.
- The terms of the VVPA, including any purchase price to be paid by the contract holder, the requirements for eligibility and conditions of coverage, and any exclusions.
- Whether the VVPA may be canceled by the contract holder during a free-look period, and that the contract holder is entitled to a full refund if the contract is cancelled of any purchase price if no benefits have been provided.
- Any procedure the contract holder must follow to obtain a benefit under the terms and conditions of the VVPA, including a telephone number, website, or mailing address where the contract holder may apply for a benefit.
- Whether the VVPA is cancelable after the free-look period and the conditions under which it may be canceled, including the procedures for requesting any refund of the unearned purchase price paid by the contract holder. In the event that the agreement is cancelable, it must include the methodology for calculating any refund due of the unearned purchase price of the vehicle value protection agreement.
- The extension or terms of credit, or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of the vehicle value protection agreement.

- A VVPA must state the terms, restrictions, or conditions governing cancellation of the VVPA before the termination or expiration date of the VVPA by either the provider or the contract holder. The provider of the VVPA shall mail a written notice to the contract holder at the last known address of the contract holder contained in the records of the provider at least 5 days before cancellation by the provider, which notice must state the effective date of the cancellation and the reason for the cancellation. However, such prior notice is not required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by the contract holder to the provider or administrator, or a substantial breach of duties by the contract holder relating to the covered motor vehicle or its use. If a vehicle value protection agreement is canceled by the provider for a reason other than nonpayment of the provider fee, the provider must refund to the contract holder 100 percent of the unearned pro rata provider fee paid by the contract holder, if any. If coverage under the vehicle value protection agreement continues after a claim, any refund may reflect a deduction for claims paid and, at the discretion of the provider, an administrative fee of not more than $75.

Section 7 of the bill provides that the provisions on disclosures (section 6) and the provisions on penalties (section 8) do not apply to VVPAs offered in connection with a commercial transaction, which is defined in section 4 of the bill as a transaction in which the motor vehicle subject to the transaction is used primarily for business or commercial purposes. This section of the bill adopts the Revised Model Act.

Section 8 of the bill provides that a provider, an administrator, or any other person who willfully and intentionally violates the Florida Vehicle Value Protection Agreements Act commits a noncriminal violation.[28] Such violation is punishable by a civil fine not to exceed $500 per violation and not more than $10,000 in the aggregate for all violations of a similar nature. For purposes of this section, the term "violations of a similar nature" means violations that consist of the same or similar course of conduct, action, or practice, irrespective of the number of times the action, conduct, or practice determined to be a violation of the Florida Act occurred. The bill adopts part of the Revised Model Act that provides for penalties, including the issuance of cease and desist orders and the imposition of penalties. The OFR has administrative authority to issue cease and desist orders pursuant to s. 520.994, F.S.

Excess Wear and Use Waiver Agreements

Section 9 of the bill substantially adopts the definition of "excess wear and use waiver" in the Revised Model Act to mean a contractual agreement wherein a lessor agrees, with or without a separate charge, to cancel or waive all or part of amounts that may become due under a lease agreement as a result of excessive wear and use of a motor vehicle, which agreement must be part of, or a separate addendum to, the lease agreement. Such waivers may also cancel or waive amounts due for excess mileage.

[28] Section 775.08(3), F.S., defines "noncriminal violation" as any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense.

The bill establishes legal authority and requirements for retail lessees to contract with retail lessors for an excess wear and use waiver in connection with lease agreements. The terms of the related motor vehicle lease may not be conditioned upon the consumer's payment for any excess wear and use waiver. However, excess wear and use waivers may be discounted or given at no charge in connection with the purchase of other noncredit-related goods. A lease agreement that includes an excess wear and use waiver must disclose all of the following:

- The total charge for the excess wear and use waiver.
- Any exclusions or limitations on the amount of excess wear and use which may be waived under the excess wear and use waiver.
- The terms, restrictions, or conditions governing cancellation of the excess wear and use waiver before the termination or expiration of the excess wear and use waiver, which may include an administrative fee of not more than $75.

The bill provides that an excess wear and use waiver is not insurance for purposes of the Florida Insurance Code.

Guaranteed Asset Protection Products

Section 1 of the bill amends the definition of "guaranteed asset protection product" to mean:

> a loan, lease, or retail installment contract term, or modification or addendum to a loan, lease, or retail installment contract, under which a creditor agrees, with or without a separate charge, to cancel or waive a customer's liability for payment of some or all of the amount by which the debt exceeds the value of the collateral that has incurred total physical damage or is the subject of an unrecovered theft. A guaranteed asset protection product may also provide, with or without a separate charge, a benefit that waives a portion of, or provides a customer with a credit toward, the purchase of a replacement motor vehicle…This subsection also applies to all guaranteed asset protection products issued before October 1, 2008.

The current definition of GAP products under Florida law is being amended to substantially conform to the Revised Model Act, and clarify that a GAP product can:

- Be included in a loan contract with or without a separate fee;
- Cover a loan balance when a consumer has a total loss of their car or an unrecovered theft; and
- Provide a credit towards the purchase of a replacement motor vehicle.

Section 2 of the bill provides that if a contract for a GAP product is terminated, the entity that sold the product must refund to the buyer all unearned portions of the purchase price of the contract, unless the contract provides otherwise.

The bill also prohibits an entity that gives a refund pursuant to s. 520.07(11)(g), F.S., from deducting more than $75 in administrative fees from the refund.

The bill allows GAP products to be cancelable or noncancelable after a free-look period, which is defined in **section 4** of the bill to mean the period of time, commencing on the effective date of the contract, during which the buyer may cancel the contract for a full refund of the purchase price. The period may not be shorter than 30 days.

If a GAP product is terminated because of:

- A default under the retail installment contract or contract for a loan,
- The repossession of the motor vehicle associated with such contract or loan, or
- Any other termination of such contract or loan, a refund of the GAP product amount maybe used to satisfy any balance owed on the retail installment contract or contract for a loan unless the buyer can show that the retail installment contract has been paid in full.

Effective Date

Section 10 of the bill provides an effective date of October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None identified.

B. Public Records/Open Meetings Issues:

None.

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:

OFR reports that any insignificant fiscal impact that may result from this bill could be absorbed within its current resources.[29]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 520.02 and 520.07 of the Florida Statutes.
This bill creates sections 520.151, 520.152, 520.153, 520.154, 520.155, 520.156, and 520.157 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/CS by Commerce and Tourism on January 30, 2024:
The CS provides that if a contract for a guaranteed asset protection product is terminated, the entity that sold the product must refund to the buyer all unearned portions of the purchase price of the contract, unless the contract provides otherwise.

CS by Banking and Insurance on January 16, 2024:
- Removes the modification to the definition of "guaranteed asset protection product" that would apply the definition to "related" products issued before October 1, 2008;
- With respect to financial security requirements for VVPAs, requires a provider to place the reserve in trust with the office (rather than the commission), and to provide the OFR (rather than the commission) with a copy of the company's audited financial statements;
- Removes the option for another form of security held in reserve to be prescribed by commission regulation;
- Removes the definitions of the terms "person" and "commission;"
- Clarifies that the exemption for commercial transactions applies to the disclosure and penalties provisions by amending the cross-reference from s. 520.155, F.S., to s. 520.156, F.S.; and
- Relocates provisions on "excess wear and use waiver" from ch. 521, F.S., (motor vehicle lease disclosure) to ch. 520, F.S. (retail installment sales).

[29] Email from Gregory C Oats, Director of the Division of Consumer Finance, OFR, to Jacqueline Moody, Florida Senate Committee on Banking and Insurance Senior Attorney, *SB 902*, (Jan. 12, 2024) (on file with Senate Committee on Banking and Insurance.

B. Amendments:

None.

By the Committees on Commerce and Tourism; and Banking and Insurance; and Senator Boyd

577-02656-24 2024902c2

A bill to be entitled

An act relating to motor vehicle retail financial agreements; amending s. 520.02, F.S.; revising the definition of the term "guaranteed asset protection product"; amending s. 520.07, F.S.; requiring entities to refund the portions of the purchase price of the contract for a guaranteed asset protection product under certain circumstances; prohibiting certain entities from deducting more than a specified amount in administrative fees when providing a refund of a guaranteed asset protection product; authorizing guaranteed asset protection products to be cancelable or noncancelable under certain circumstances; authorizing certain entities to pay refunds directly to the holder or administrator of a loan under certain circumstances; creating s. 520.151, F.S.; providing a short title; creating s. 520.152, F.S.; defining terms; creating s. 520.153, F.S.; authorizing the offer, sale, or gift of vehicle value protection agreements in compliance with a certain act; specifying a requirement regarding the amount charged or financed for a vehicle value protection agreement; prohibiting the conditioning of credit offers or terms for the sale or lease of a motor vehicle upon a consumer's payment for or financing of any charge for a vehicle value protection agreement; authorizing discounting or giving the vehicle value protection agreement at no charge under certain circumstances; authorizing providers to use an administrator or other

577-02656-24 2024902c2

designee for administration of vehicle value protection agreements; prohibiting vehicle value protection agreements from being sold under certain circumstances; specifying financial security requirements for providers; prohibiting additional financial security requirements from being imposed on providers; creating s. 520.154, F.S.; requiring vehicle value protection agreements to include certain disclosures in writing, in clear and understandable language; requiring vehicle value protection agreements to state the terms, restrictions, or conditions governing cancellation by the provider or the contract holder; specifying requirements for notice by the provider, refund of fees, and deduction of fees in the event the vehicle value protection agreement is canceled; creating s. 520.155, F.S.; providing an exemption for vehicle value protection agreements in connection with a commercial transaction; creating s. 520.156, F.S.; providing noncriminal penalties; defining the term "violations of a similar nature"; creating s. 520.157, F.S.; defining the term "excess wear and use waiver"; authorizing a retail lessee to contract with a retail lessor for an excess wear and use waiver; prohibiting conditioning the terms of the consumer's motor vehicle lease on his or her payment for any excess wear and use waiver; authorizing discounting or giving the excess wear and use waiver at no charge under certain circumstances; requiring certain disclosures for a

lease agreement that includes an excess wear and use waiver; providing construction; providing an effective date.

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

Section 1. Subsection (7) of section 520.02, Florida Statutes, is amended to read:

520.02 Definitions.—In this act, unless the context or subject matter otherwise requires:

(7) "Guaranteed asset protection product" means a loan, lease, or retail installment contract term, or modification or addendum to a loan, lease, or retail installment contract, under which a creditor agrees, with or without a separate charge, to cancel or waive a customer's liability for payment of some or all of the amount by which the debt exceeds the value of the collateral that has incurred total physical damage or is the subject of an unrecovered theft. A guaranteed asset protection product may also provide, with or without a separate charge, a benefit that waives a portion of, or provides a customer with a credit toward, the purchase of a replacement motor vehicle. Such a product is not insurance for purposes of the Florida Insurance Code. This subsection also applies to all guaranteed asset protection products issued before October 1, 2008.

Section 2. Paragraph (g) of subsection (11) of section 520.07, Florida Statutes, is amended, and paragraphs (h) and (i) are added to that subsection, to read:

520.07 Requirements and prohibitions as to retail installment contracts.—

(11) In conjunction with entering into any new retail installment contract or contract for a loan, a motor vehicle retail installment seller as defined in s. 520.02, a sales finance company as defined in s. 520.02, or a retail lessor as defined in s. 521.003, and any assignee of such an entity, may offer, for a fee or otherwise, optional guaranteed asset protection products in accordance with this chapter. The motor vehicle retail installment seller, sales finance company, retail lessor, or assignee may not require the purchase of a guaranteed asset protection product as a condition for making the loan. In order to offer any guaranteed asset protection product, a motor vehicle retail installment seller, sales finance company, or retail lessor, and any assignee of such an entity, shall comply with the following:

(g) If a contract for a guaranteed asset protection product is terminated, the entity shall refund to the buyer all ~~any~~ unearned portions of the purchase price of ~~fees paid for~~ the contract unless the contract provides otherwise. A refund is not due to a consumer who receives a benefit under such product. In order to receive a refund, the buyer must notify the entity of the event terminating the contract and request a refund within 90 days after the occurrence of the event terminating the contract. An entity may offer a buyer a contract that does not provide for a refund only if the entity also offers that buyer a bona fide option to purchase a comparable contract that provides for a refund. An entity may not deduct more than $75 in administrative fees from a refund made under this subsection.

(h) Guaranteed asset protection products may be cancelable or noncancelable after a free-look period as defined in s.

520.152.

(i) If the termination of the guaranteed asset protection product occurs because of a default under the retail installment contract or contract for a loan, the repossession of the motor vehicle associated with the retail installment contract or contract for a loan, or any other termination of the retail installment contract or contract for a loan, the entity may pay any refund due directly to the holder or administrator and apply the refund as a reduction of the amount owed under the retail installment contract or contract for a loan, unless the buyer can show that the retail installment contract has been paid in full.

Section 3. Section 520.151, Florida Statutes, is created to read:

520.151 Florida Vehicle Value Protection Agreements Act.—Sections 520.151-520.156 may be cited as the "Florida Vehicle Value Protection Agreements Act."

Section 4. Section 520.152, Florida Statutes, is created to read:

520.152 Definitions.—As used in ss. 520.151-520.156, unless the context or subject matter otherwise requires, the term:

(1) "Administrator" means the person who is responsible for the administrative or operational function of managing vehicle value protection agreements, including, but not limited to, the adjudication of claims or benefit requests by contract holders.

(2) "Commercial transaction" means a transaction in which the motor vehicle subject to the transaction is used primarily for business or commercial purposes.

(3) "Contract holder" means a person who is the purchaser

or holder of a vehicle value protection agreement.

(4) "Finance agreement" means a loan, retail installment sales contract, or lease for the purchase, refinancing, or lease of a motor vehicle.

(5) "Free-look period" means the period of time, commencing on the effective date of the contract, during which the buyer may cancel the contract for a full refund of the purchase price. This period may not be shorter than 30 days.

(6) "Motor vehicle" has the same meaning as provided in s. 520.02.

(7) "Provider" means a person that is obligated to provide a benefit under a vehicle value protection agreement. A provider may function as an administrator or retain the services of a third-party administrator.

(8) "Vehicle value protection agreement" includes a contractual agreement that provides a benefit toward either the reduction of some or all of the contract holder's current finance agreement deficiency balance or the purchase or lease of a replacement motor vehicle or motor vehicle services upon the occurrence of an adverse event to the motor vehicle, including, but not limited to, loss, theft, damage, obsolescence, diminished value, or depreciation. The term does not include guaranteed asset protection products as defined in s. 520.02. Such a product is not insurance for purposes of the Florida Insurance Code.

Section 5. Section 520.153, Florida Statutes, is created to read:

520.153 Requirements and prohibitions as to vehicle value protection agreements.—

(1) Vehicle value protection agreements may be offered, sold, or given to consumers in this state in compliance with this act.

(2) Notwithstanding any other law, any amount charged or financed for a vehicle value protection agreement is not considered a finance charge or interest and must be separately stated in the finance agreement and in the vehicle value protection agreement.

(3) The extension of credit, the terms of credit, or the terms of the related motor vehicle sale or lease may not be conditioned upon the consumer's payment for or financing of any charge for a vehicle value protection agreement. However, a vehicle value protection agreement may be discounted or given at no charge in connection with the purchase of other noncredit-related goods or services.

(4) A provider may use an administrator or other designee to administer a vehicle value protection agreement.

(5) A vehicle value protection agreement may not be sold to any person unless he or she has been or will be provided access to a copy of such vehicle value protection agreement at a reasonable time after such vehicle value protection agreement is sold.

(6) A vehicle value protection agreement may not be sold if coverage is duplicative of another vehicle value protection agreement sold to a person or duplicative of a guaranteed asset protection product.

(7) Each provider shall do one of the following:

(a) Insure all of its vehicle value protection agreements under a policy that pays or reimburses the contract holder in

the event the provider fails to perform its obligations under the vehicle value protection agreement. The insurer must be licensed or otherwise authorized or eligible to do business in this state.

(b) Maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves may not be less than 40 percent of gross consideration received, less claims paid, on the sale of the vehicle value protection agreement for all in-force contracts in this state. The reserve must be placed in trust with the office and have a financial security deposit valued at not less than 5 percent of the gross consideration received, less claims paid, on the sale of the vehicle value protection agreements for all vehicle value protection agreements issued and in force in this state, but at least $25,000. The reserve account must consist of one of the following:

1. A surety bond issued by an authorized surety.

2. Securities of the type eligible for deposit by insurers as provided in s. 625.52.

3. Cash.

4. A letter of credit issued by a qualified financial institution.

(c) Maintain, or together with its parent corporation maintain, a net worth or stockholders' equity of $100 million and, upon request, provide the office with a copy of the provider's or the provider's parent company's Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year, or if the company does not file with the Securities and Exchange Commission, a copy of the company's

audited financial statements, which must show a net worth of the provider or its parent company of at least $100 million. If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial security requirement, the parent company must agree to guarantee the obligations of the provider relating to vehicle value protection agreements sold by the provider in this state.

(8) A financial security requirement other than those imposed in subsection (7) may not be imposed on vehicle value protection agreement providers.

Section 6. Section 520.154, Florida Statutes, is created to read:

520.154 Disclosures.—

(1) A vehicle value protection agreement must disclose in writing, in clear, understandable language, all of the following:

(a) The name and address of the provider, contract holder, and administrator, if any.

(b) The terms of the vehicle value protection agreement, including, but not limited to, the purchase price to be paid by the contract holder, if any, the requirements for eligibility and conditions of coverage, and any exclusions.

(c) Whether the vehicle value protection agreement may be canceled by the contract holder during a free-look period as defined in s. 520.152, and that, in the event of cancellation, the contract holder is entitled to a full refund of the purchase price, if any, so long as no benefits have been provided.

(d) The procedure the contract holder must follow, if any, to obtain a benefit under the terms and conditions of the

vehicle value protection agreement, including, if applicable, a telephone number, website, or mailing address where the contract holder may apply for a benefit.

(e) Whether the vehicle value protection agreement is cancelable after the free-look period and the conditions under which it may be canceled, including the procedures for requesting any refund of the unearned purchase price paid by the contract holder. In the event that the agreement is cancelable, it must include the methodology for calculating any refund due of the unearned purchase price of the vehicle value protection agreement.

(f) That the extension of credit, the terms of the credit, or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of the vehicle value protection agreement.

(2) A vehicle value protection agreement must state the terms, restrictions, or conditions governing cancellation of the vehicle value protection agreement before the termination or expiration date of the vehicle value protection agreement by either the provider or the contract holder. The provider of the vehicle value protection agreement shall mail a written notice to the contract holder at the last known address of the contract holder contained in the records of the provider at least 5 days before cancellation by the provider, which notice must state the effective date of the cancellation and the reason for the cancellation. However, such prior notice is not required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by the contract holder to the provider or administrator, or a substantial breach of duties by

the contract holder relating to the covered motor vehicle or its use. If a vehicle value protection agreement is canceled by the provider for a reason other than nonpayment of the provider fee, the provider must refund to the contract holder 100 percent of the unearned pro rata provider fee paid by the contract holder, if any. If coverage under the vehicle value protection agreement continues after a claim, any refund may reflect a deduction for claims paid and, at the discretion of the provider, an administrative fee of not more than $75.

Section 7. Section 520.155, Florida Statutes, is created to read:

520.155 Commercial transactions exempt.—Sections 520.154 and 520.156 do not apply to vehicle value protection agreements offered in connection with a commercial transaction.

Section 8. Section 520.156, Florida Statutes, is created to read:

520.156 Penalties.—A provider, an administrator, or any other person who willfully and intentionally violates ss. 520.151-520.155 commits a noncriminal violation as defined in s. 775.08(3), punishable by a fine not to exceed $500 per violation and not more than $10,000 in the aggregate for all violations of a similar nature. For purposes of this section, the term "violations of a similar nature" means violations that consist of the same or similar course of conduct, action, or practice, irrespective of the number of times the action, conduct, or practice determined to be a violation of ss. 520.151-520.155 occurred.

Section 9. Section 520.157, Florida Statutes, is created to read:

520.157 Excess wear and use waiver.—

(1) For purposes of this section, the term "excess wear and use waiver" means a contractual agreement wherein a lessor agrees, regardless of whether subject to a separate fee, to cancel or waive all or part of amounts that may become due under a lease agreement as a result of excess wear and use of a motor vehicle, which agreement must be part of, or a separate addendum to, the lease agreement. Such waivers may also cancel or waive amounts due for excess mileage.

(2) A retail lessee may contract with a retail lessor for an excess wear and use waiver in connection with a lease agreement.

(3) The terms of the related motor vehicle lease may not be conditioned upon the consumer's payment for any excess wear and use waiver. However, excess wear and use waivers may be discounted or given at no charge in connection with the purchase of other noncredit-related goods.

(4) A lease agreement that includes an excess wear and use waiver must disclose all of the following:

(a) The total charge for the excess wear and use waiver.

(b) Any exclusions or limitations on the amount of excess wear and use which may be waived under the excess wear and use waiver.

(c) The terms, restrictions, or conditions governing cancellation of the excess wear and use waiver before the termination or expiration of the excess wear and use waiver, which may include an administrative fee of not more than $75.

(5) An excess wear and use waiver is not insurance for purposes of the Florida Insurance Code.

Section 10. This act shall take effect October 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/CS/CS/SB 996
INTRODUCER:	Fiscal Policy Committee; Appropriations Committee on Education; Education Pre-K -12 Committee; and Senator Burgess
SUBJECT:	Education
DATE:	February 16, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Palazesi	Bouck	ED	**Fav/CS**
2.	Gray	Elwell	AED	**Fav/CS**
3.	Palazesi	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 996 makes several changes to Florida's K-12 public schools and postsecondary institutions.

For Florida's K-12 public schools, the bill:

- Clarifies the process for students enrolled in an approved virtual instruction program provider or virtual charter school to participate in statewide, standardized assessments and assessments in the coordinated screening and progress monitoring system.
- Clarifies that it not necessary to make an annual application for exemption on property used to house a charter school.
- Defines a classical school and authorizes an enrollment preference at classical charter schools for students who were previously enrolled in a public school that implemented a classical school model.
- Provides additional student populations a charter school can target in its enrollment process.
- Creates the Purple Star School District program.
- Authorizes school districts to assign disruptive students to a disciplinary program or alternative-to-expulsion program.
- Authorizes alternate methods of communicating to parents regarding placement into a dropout prevention and academic intervention program.
- Prohibits school districts from identifying students as eligible to receive services through the dropout prevention and academic intervention program based solely on a student having a

disability, and requires an academic intervention plan for each student enrolled in a dropout prevention and academic intervention program.
- Revises the deadlines for submission of turnaround plans and requirements under a turnaround option available to low performing schools and specifies the responsibilities of a school district and charter school in implementing a turnaround plan for a public school reopening as a charter school.
- Provides that, beginning in the 2024-2025 school year, any changes made by the State Board of Education (SBE) to components in the school grades model or to the school grading scale go into effect, at the earliest, in the following school year.
- Authorizes the Commissioner of Education to appoint and remove the executive director for the Education Practices Commission.
- Provides students in grades 11 and 12 an opportunity to take the Armed Services Vocational Aptitude Battery (ASVAB) and consult with a military recruiter during the school day.
- Provides that a private school may use certain facilities, under the facility's preexisting zoning and land use designations and without having to implement any mitigation requirements or conditions, subject to specified limitations.
- Requires the SBE to establish a specialized teaching certificate for educators who teach in a classical school.
- Requires that publishers make instructional materials available to teacher preparation programs and educator preparation institutes at a discount below publisher cost.

For postsecondary institutions, the bill:
- Allows documentation of the homestead exemption as a single piece of evidence proving residency for tuition purposes.
- Repeals the Florida College System's (FCS's) employment equity and accountability program.
- Requires that dual enrollment articulation agreements include consideration of online courses.
- Transitions the effective period for the amount paid by the Florida Prepaid College Board to state universities on behalf of qualified beneficiaries of advance payment contracts within the Prepaid Florida Program from 2009-2010 to 2022-2023.
- Creates a new Associates of Arts specialized transfer degree for students who need additional credit above the 60 hours in preparation for transfer to a baccalaureate degree program.
- Authorizes FCS institutions to charge an amount not to exceed $290 per credit hour for nonresident tuition and fees for distance learning.
- Prohibits members of an FCS institution or state university board of trustees from doing business or having any business affiliation with any institution under their purview while they are a member of the board of trustees

This bill could have a fiscal impact to the Department of Education and the Florida College System. The cost is indeterminate at this time. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

Charter Schools

Present Situation

Charter schools are public schools that operate under a performance contract, or a "charter" which frees them from many regulations created for traditional public schools while holding them accountable for academic and financial results. The charter contract between the charter school governing board and the sponsor details the school's mission, program, goals, students served, methods of assessment, and ways to measure success.[1] As part of the charter application to the sponsor, the charter school must disclose the name of each applicant, governing board member, and all proposed education services providers.[2]

Classical Education

In Florida, some charter schools implement a classical education curriculum, which is centered on "the pursuit of wisdom and virtue by means of a rich and ordered course of study grounded in the liberal arts tradition."[3] A classical education curriculum incorporates the concept of the three ways of learning, or trivium. The trivium refers to the three learning stages: grammar, logic and rhetoric.[4] Students are taught all three states of the trivium in kindergarten through grade 12 but each stage is emphasized in certain grade bands:

- Kindergarten through Grade 6 focus on grammar.
- Grades 7 through Grade 3 focus on logic.
- Grades 10 through Grade 12 focus on rhetoric.[5]

There are currently 18 classical charter schools in Florida, operating in 9 districts.[6]

Charter School Enrollment

Charter schools are allowed to provide an enrollment preference to the following student populations:

- Students who are siblings of a student enrolled in a charter school.
- Students who are children of a member of the governing board of the charter school.

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[1] Florida Department of Education, *FAQ, What are charter schools?*, http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml (last visited Feb. 2, 2024). *See also* 1002.33(7), F.S.
[2] Section 1002.33(6), F.S.
[3] Thomas B. Fordham Institute, *Classical education is growing. Here's how to keep it that way*, https://fordhaminstitute.org/national/commentary/classical-education-growing-heres-how-keep-it-way, (last visited Feb. 9, 2024).
[4] Classical Academic Press, *An Introduction to Classical Education: A Guide for Parents*, https://cdn.shopify.com/s/files/1/0264/3014/4583/files/ICE_version2.6.pdf, (last visited Feb 9, 2024).
[5] *Id.*
[6] Email, Florida Department of Education, Legislative Affairs (Feb. 2, 2024).

- Students who are children of an employee of the charter school.
- Students who are children of:
  - An employee of the business partner of a charter school-in-the-workplace or a resident of the municipality in which the charter school is located.
  - A resident or employee of a municipality that operates a charter school-in-a-municipality or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of a charter school.
- Students who have successfully completed, during the previous year, a voluntary prekindergarten education program provided by the charter school, the charter school's governing board, or a voluntary prekindergarten provider that has a written agreement with the governing board.
- Students who are the children of an active duty member of any branch of the United States Armed Forces.
- Students who attended or are assigned to failing schools.
- Students who are the children of a safe-school officer at the school.[7]

Charter schools are also authorized to limit the enrollment process to target specific student populations that include the following:

- Students within specific age groups or grade levels.
- Students considered at risk of dropping out of school or academic failure. Such students shall include exceptional education students.
- Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality established.
- Students residing within a reasonable distance of the charter school. Such students are subject to a random lottery and to the racial/ethnic balance or any federal provisions that require a school to achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other nearby public schools.
- Students who meet reasonable academic, artistic, or other eligibility standards established by the charter school and included in the charter school application and charter or, in the case of existing charter schools, standards that are consistent with the school's mission and purpose, but which may not discriminate against otherwise qualified individuals. A school that limits enrollment for such purposes must place a student on a progress monitoring plan for at least one semester before dismissing the student from the school.
- Students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor.
- Students living in a development in which a developer, including any affiliated business entity or charitable foundation, contributes to the formation, acquisition, construction, or operation of one or more charter schools or charter school facilities and related property in an amount equal to or having a total appraised value of at least $5 million to be used as charter schools to mitigate the educational impact created by the development of new residential dwelling units. Students living in the development are entitled to 50 percent of the student stations in the charter schools. The students who are eligible for enrollment are subject to a random lottery, the racial/ethnic balance provisions, or any federal provisions.[8]

[7] Section 1002.33(10)(d), F.S.
[8] Section 1002.33(10)(e), F.S.

Charter School Facilities and Tax Exempt Status

In the 2022-2023 school year, there were 726 charter schools in 46 Florida districts.[9] Similar to traditional public schools, charter schools may use capital outlay funding on the purchase of real property, construction of school facilities and purchase, lease-purchase, or lease of permanent or relocatable school facilities.[10] Charter schools are considered educational institutions[11] within the state and property used by them for educational purposes are exempt from taxation.[12] Unless waived by the county, persons or organizations eligible for a property tax exemption are required to file an application with the property appraiser on or before March 1 of each year in which the exemption is claimed.[13] For charter schools, any facility, or portion thereof, used to house a charter school whose charter has been approved by the sponsor[14] and the charter school governing board is exempt from ad valorem taxes. For leasehold properties, the landlord must certify by affidavit to the charter school that the required payments under the lease, whether paid to the landlord or on behalf of the landlord to a third party, will be reduced to the extent of the exemption received.[15]

It is not necessary for an annual application for exemption to be filed for:

- Houses of public worship, the lots on which they are located, personal property located therein or thereon, parsonages, burial grounds and tombs owned by houses of public worship, individually owned burial rights not held for speculation, or other such property not rented or hired out for other than religious or educational purposes at any time.
- Household goods and personal effects of permanent residents of this state.
- Property of the state or any county, any municipality, any school district, or community college district thereof.[16]

Effect of Proposed Changes

The bill amends s. 1002.33, F.S., to remove outdated language referencing "charter school owners." Charter schools operate as not-for-profit organizations administered by a governing board, not an owner. This bill provides that a classical charter school can give enrollment preference to students who transfer from another classical school in the state. The bill defines a classical school as a traditional public school or a charter school that implements a classical education model that emphasizes the development of students in the principles of moral character and civic virtue through a well-rounded education in the liberal arts and sciences which is based on the classical trivium stages of grammar, logic and rhetoric.

The bill adds to the list of student populations a charter school is authorized to target in enrollment limits, to include students whose parent or legal guardian maintains a physical or

[9] Florida Department of Education, *Florida's Charter Schools Fact Sheet*, https://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-Sept-2022.pdf (last visited Feb. 2, 2024).
[10] Section 1013.62(4), F.S.
[11] Section 196.012(5), F.S.
[12] Section 196.198, F.S.
[13] Section 196.011(1)(a), F.S.
[14] Section 1002.33, F.S. Charter school sponsors include a district school board, a state university system, a Florida College System institution, a charter school-in-the-workplace, and a charter school in-a-municipality.
[15] Section 196.1983, F.S.
[16] Section 196.011(3), F.S.

permanent employment presence within the same development that the charter school is located, or who are employed within a reasonable distance from the school, subject to random lottery within that student population.

The bill amends s. 196.011, F.S., to prohibit counties from requiring any facility, or portion thereof, used to house a charter school from making an annual application for exemption on property. The bill requires that the owner or lessee notify the property appraiser promptly whenever the use of the property or the status or condition of the owner or lessee changes so as to change the exempt status of the property. Failure to properly notify, and a determination by the property appraiser that for any year within the prior 10 years the owner or lessee was not entitled to receive such exemption, the owner or lessee of the property is subject to the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted.

The bill requires the property appraiser who is making the determination to record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien and the property is subject to the payment of all taxes and penalties. The bill also requires that when the lien is filed it must be attached to any property, identified in the notice of tax lien, owned by the person or entity who illegally or improperly received the exemption. If such person or entity no longer owns property in that county but owns property in some other county or counties in the state, the property appraiser is required to record a notice of tax lien in the other county or counties, identifying the property owned by such person or entity in such county or counties, and it becomes a lien against such property in such county or counties.

Private Schools

Present Situation

A private school is a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten through grade 12 or higher.[17] A private school that participates in the scholarship program must also:

- Comply with 42 U.S.C. s. 2000d which prohibits excluding a person from participating in federally assisted programs on the grounds of race, color, or national origin.
- Notify the Department of Education (DOE) of its intent to participate in the scholarship program.
- Notify the DOE of any changes in the school's name, director, mailing address, or physical location within 15 days of change.
- Provide to the DOE or the scholarship funding organization (SFO) all required documentation for student registration and payment.
- Provide to the SFO the school's fee schedule.
- Annually complete and submit to the DOE a notarized scholarship compliance statement verifying compliance with the background screening requirements.
- Demonstrate fiscal soundness in accordance with statutory requirements.

[17] Section 1002.01(3), F.S.

- Meet applicable state and local health. Safety, and welfare laws, codes, and rules.
- Employ or contract with teachers that meet specified requirements.
- Maintain a physical location in the state at which each student has regular and direct contact with teachers.
- Provide to parents information regarding the school's programs, services, classroom teacher qualifications, and a statement that a private school student with a disability does not have a right to all of the services that the student would receive if enrolled in a public school under the Individuals with Disabilities Education Act (IDEA).
- Provide the parent, at least on a quarterly basis, a written report of the student's progress.
- Cooperate with a parent who wants a student to participate in Florida's statewide standardized assessments.
- Adopt policies establishing standards of ethical conduct for educational support employees, instructional personnel, and school administrators.
- Not to be owned or operated by a person or an entity domiciled in, owned by, or in any way controlled by a foreign country of concern or foreign principal, as identified in law.[18]

Private schools that participate in a state scholarship program must, complete a Scholarship Program Compliance form, which includes the following questions related to the school facility:

- Does the school facility meet the prescribed minimum requirements and standards of sanitation and safety for K-12 private schools, with current Florida law?
- If the school facility possesses a well, is it licensed or permitted pursuant to the Florida Safe Drinking Water Act?
- If the school facility stores, prepares, or serves food to students, does the school possess a current, food service establishment sanitation certificate in accordance with Florida law?
- If the school facility is located in a non-exempt county, does the school possess a current and acceptable Mandatory Measurements Nonresidential Radon Measurement Report in accordance with current Florida Law?
- Does the school facility possess a current, violation free or satisfactory Fire Code inspection and compliance report in accordance with current Florida law and county and/or municipal ordinance?[19]

After a new private school applies to participate in a state scholarship program, the Department of Education (DOE) schedules and conducts a site visit at the school's physical location. A private school is ineligible to receive scholarship payments until a satisfactory site visit has been conducted by the DOE.[20]

Effect of Proposed Changes

The bill amends s. 1002.42, F.S., to provide that a private school may use facilities on property that is owned or leased by, or purchased from a library, community service organization, museum, performing arts venue, theatre, cinema, or church facility under s. 170.201, F.S.,[21]

[18] Section 1002.421(1)(a)-(s), F.S.; *see also* Rule 6A-6.03315, F.A.C.
[19] Rule 6A-6.03315, F.A.C.
[20] *Id.*
[21] Section 170.201(2), F.S. defines a "religious institution" as any church, synagogue, or other established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on

which is or was actively used as such within 5 years of any executed agreement with a private school to use the facilities; any facility or land owned by a Florida College System institution or university; any similar public institutional facilities; and any facility recently used to house a school or child care facility licensed under s. 402.305, F.S.,[22] under any such facility's preexisting zoning and land use designations without rezoning or obtaining a special exception or a land use change, and without complying with any mitigation requirements or conditions. The facility must be located on property used solely as one of the designated facilities and meet applicable state and local health, safety, and welfare laws, codes, and rules, including fire safety and building safety.

This provision is similar to an authorization in law for charter schools and Schools of Hope to use such facilities under preexisting zoning and land use designations.[23]

Virtual Schools

Present Situation

Virtual Instruction Programs

Virtual instruction programs are provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both. Each school district is required to provide at least one option for part-time and full-time virtual instruction for students residing within the school district. To provide students residing in the school district the option of participating in virtual instruction programs, a school district may:

- Contract with the Florida Virtual School or establish a franchise of the Florida Virtual School.
- Contract with an approved virtual instruction program provider for the provision of a full-time or part-time.
- Enter into an agreement with other school districts to allow the participation of its students in an approved virtual instruction program provided by the other school district.
- Establish school district operated part-time or full-time kindergarten through grade 12 virtual instruction programs.
- Enter into an agreement with a virtual charter school authorized by the school district.[24]

The Department of Education is required to annually publish on its website a list of providers approved by the State Board of Education to offer virtual instruction programs.[25]

Students enrolled in a school district's virtual instruction program must participate in statewide assessments and participate in the coordinated screening and progress monitoring system.[26] Statewide assessments and progress monitoring may be administered within the school district in which such student resides, or as specified in the contract[27] with a qualified contractor to administer and proctor statewide, standardized assessments. If requested by the approved virtual

[22] Section 402.305, F.S. provides for the licensing requirements for child care facilities.
[23] Sections 1002.33(18)(c) and 1002.333(7)(b), F.S.
[24] Section 1002.45(1), F.S.
[25] Section 1002.45(2), F.S.
[26] Section 1002.45(5), F.S.
[27] Section 1008.24(3), F.S.

instruction program provider or virtual charter school, the district of residence must provide the student with access to the district's testing facilities.[28]

Statewide Assessments and the Coordinated Screening and Program Monitoring

Florida's statewide, standardized assessments measure the extent to which students have mastered the state academic standards. Florida and federal law require that all public school students participate in statewide, standardized English Language Arts (ELA) and Mathematics assessments at least annually beginning in the 3rd grade, and a science assessment at least once in each of grades 3 through 5, 6 through 9, and 10 through 12.[29] Students must also participate in statewide, standardized end-of-course (EOC) assessments in Algebra I, Geometry, Biology I, Civics, and U.S. History.[30]

All Voluntary Prekindergarten (VPK) providers and public schools in Florida are required to participate in a coordinated screening and progress monitoring system (CSPM) for students in VPK through grade 8 in mathematics and VPK through grade 10 in ELA.[31] The CSPM is administered three times a year. The end-of-year comprehensive progress monitoring assessment administered to students is considered the statewide, standardized ELA assessment for students in grades 3 through 10 and the statewide, standardized Mathematics assessment for students in grades 3 through 8.[32]

Effect of Proposed Changes

The bill amends section 1002.45, F.S., to clarify the process for students enrolled in an approved virtual instruction program provider or virtual charter school to participate in all statewide standardized assessments and in the coordinated screening and progress monitoring system. The bill requires that the virtual instruction program provider or virtual charter school provide the school district a list of students to be tested, which includes student names, Florida Education Identifiers, grade levels, assessments to be administered and contact information. Additionally, the bill requires that, unless an alternative testing site is agreed upon, all assessments must be taken at the school to which the student would be assigned according to the district school board attendance areas. Finally, the bill requires school districts to provide the student with access to the school or district testing facilities and the date and time of the administration of each statewide assessment.

Armed Services Vocational Aptitude Battery

Present Situation

School districts in Florida are required to grant military recruiters of the United States (U.S.) Armed Forces and U.S. Department of Homeland Security the same access to secondary school students, and to school facilities and grounds, that the district grants to postsecondary educational institutions or prospective employers of students. School districts are required to

[28] Section 1002.45(5), F.S.
[29] Section 1008.22(3), F.S.; 20 U.S.C. s. 6311(3)(c)(v)(II).
[30] Section 1008.22(3), F.S.
[31] Section 1008.25(9) F.S.
[32] Section 1008.22(3), F.S;

allow a student attending a public high school in the district to enroll in the Junior Reserve Officers' Training Corps at another public high school in the district unless:

- The student's school offers the Junior Reserve Officers' Training Corps (JROTC) for any branch of the U.S. Armed Forces or United States Department of Homeland Security.
- The student does not meet the JROTC minimum enrollment qualifications.
- Scheduling of the student's courses of study does not allow the student to attend the JROTC at another public high school in the district.[33]

The Armed Services Vocational Aptitude Battery (ASVAB) is a multiple-aptitude battery that measures developed abilities and helps predict future academic and occupational success in the military. It is administered annually to more than one million military applicants, high school, and post-secondary students.[34] Most ASVAB testing is currently conducted at a Military Entrance Process Station. The ASVAB is administered via computer-based and paper-based tests and are designed to measure aptitudes in four domains:[35]

- Verbal
- Math
- Science
- Technical

Each branch of the military has different standards. The minimum scores each branch of the military requires depends on whether a potential recruit has a high school diploma or a high school equivalency diploma (GED). Those students with a GED need a higher Armed Forces Qualification Test (AFQT) score than students with a high school diploma. An AFQT score of 60 indicates that the examinee scored as well as or better than 60 percent of the nationally representative sample. For high school graduates earning a diploma, the minimum AFQT score by military branch are as follows:

- Air Force - 31
- Army - 31
- Coast Guard - 36
- Marine - 31
- National Guard - 31
- Navy - 31[36]

AFQT scores are divided into five categories:

- Category I - 93-99
- Category II - 65-92
- Category IIIa - 50-64
- Category IIIb - 31-49
- Category IVa - 21-30

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[33] Section 1003.451, F.S.
[34] Armed Services Vocational Aptitude Battery (ASVAB), *What is the ASVAB*, https://www.officialasvab.com/, (last visited Feb. 2, 2024).
[35] Armed Services Vocational Aptitude Battery, *ASVAB Fact Sheet*, https://www.officialasvab.com/wp-content/uploads/2023/06/ASVAB-Fact_Sheet.pdf, (last visited Feb 2, 2024).
[36] Official ASVAB, *Enlistment Eligibility*, https://www.officialasvab.com/applicants/enlistment-eligibility (last visited Jan. 21, 2024).

- Category IVb - 16-20
- Category IVc - 10-15
- Category V - 1-9[37]

The school grading formula for high schools was modified to include the percentage of students who earned an AFQT score that falls within Category II or higher on the ASVAB and earned a minimum of two credits in Junior Reserve Officers' Training Corps courses from the same branch of the United States Armed Forces.[38]

Effect of Proposed Changes

The bill amends s. 1003.451, F.S., to require school districts and charter schools to provide students in grades 11 and 12 an opportunity to take the ASVAB and consult with a military recruiter if the student selects. The bill requires that if a student in grade 11 and 12 chooses to take the ASVAB, the ASVAB must be scheduled during normal school hours.

Purple Star School Districts

Present Situation

In 2021, the Legislature established Purple Star Campuses to identify schools that demonstrate a commitment to or provide critical transition supports for military-connected families.[39] For a school to earn a Purple Star School Distinction the school must:

- Designate a staff member as a military liaison.
- Maintain a web page on the school's website which includes resources for military students and their families.
- Maintain a student-led transition program that assists military students in transitioning into the school.
- Offer professional development training opportunities for staff members on issues relating to military students.
- Reserve at least five percent of controlled open enrollment seats for military students.[40]

The school must complete at least three of the following activities to support military families:

- The school hosts at least one of the following annual military recognition events: Month of the Military Child, Month of the Military Family, Purple-Up! For Military Kids, Veteran's Day, Memorial Day.
- The district school board where the school is located, or governing board in the case of a charter or private school, issues a resolution publicizing support for military students and families.
- The school partners with one or more military school liaison officer(s) to provide opportunities for active-duty parents to volunteer at the school.
- The school maintains a public display recognizing service members, veterans, or military students and families.

[37] *Id.*
[38] Chapter 2020-75, s. 2, Laws of Fla. *See also* s. 1008.34(3), F.S.
[39] Chapter 2021-65, s. 1, Laws of Fla.
[40] Section 1003.051(2), F.S.

- The school participates in a service project that connects the school with the military community, such as adopt-a-school, sending letters or care packages to deployed troops, or Yellow Ribbon events.
- The school offers the Junior Reserve Officers' Training Corps (JROTC) program.[41]

Once awarded, schools maintain their designation as a Purple Star School of Distinction for three school years.[42] Seventy-three schools completed all of the requirements to earn the Purple Star School of Distinction Designation from the 2023-2024 school year through the 2025-2026 school year. One hundred and twenty-four schools completed all of requirements to earn the Purple Star School of Distinction Designation from the 2022-2023 school year through the 2024-2025 school year. [43]

Effect of Proposed Changes

The bill creates s. 1003.052, F.S., to require the Department of Education (DOE) to establish the Purple Star School District program. The program requires that a participating school district:

- Have at least 75 percent of the schools in the school district designated as a Purple Star School of Distinction.
- Maintain a web page on the school district's website which includes resources for military students and their families and provides a link to each Purple Star School of Distinction's military web page.

The bill authorizes the DOE to establish additional criteria to identify school districts that demonstrate a commitment to or provide critical coordination of services for military-connected families, such as establishing a council consisting of a representative from each Purple Star School of Distinction in the school district and one school district-level representative to ensure alignment of military student-focused policies and procedures within the school district.

Dropout Prevention and Academic Intervention

Present Situation

Dropout Prevention and Academic Intervention

Dropout prevention and academic intervention programs can differ from traditional educational programs and schools in scheduling, administrative structure, philosophy, curriculum, or setting and employ alternative teaching methodologies, curricula, learning activities, and diagnostic and assessment procedures in order to meet the needs, interests, abilities, and talents of eligible students. Students in grades 1-12 are eligible for dropout prevention and academic intervention programs. Eligible students are reported in the appropriate basic cost factor in the Florida Education Finance Program. The strategies and supports provided to eligible students are funded through the General Appropriations Act (GAA) and may include, but are not limited to, those services identified on the student's academic intervention plan.[44]

[41] Rule 6A-1.0999, F.A.C.
[42] *Id.*
[43] Florida Department of Education, *Purple Star School of Distinction Designation*, https://www.fldoe.org/schools/family-community/activities-programs/parental-involvement/purple-star.stml, (last visited Jan. 26, 2024).
[44] Section 1003.53(1), F.S.

District school boards are required to establish course standards for dropout prevention and academic intervention programs and procedures for ensuring that teachers assigned to the programs possess the affective, pedagogical, and content-related skills necessary to meet the needs of these students.[45]

District school boards receiving state funding for dropout prevention and academic intervention programs through the GAA are required to submit information through an annual report to the Department of Education's (DOE) database documenting the extent to which each of the district's dropout prevention and academic intervention programs has been successful in the areas of graduation rate, dropout rate, attendance rate, and retention/promotion rate. The DOE compiles the information into an annual report which is submitted to the presiding officers of the Legislature by February 15.

A student is identified as being eligible to receive services funded through the dropout prevention and academic intervention program based upon one of the following criteria:

- The student is academically unsuccessful as evidenced by low test scores, retention, failing grades, low grade point average, falling behind in earning credits, or not meeting the state or district achievement levels in reading, mathematics, or writing.
- The student has a pattern of excessive absenteeism or has been identified as a habitual truant.
- The student has a history of disruptive behavior in school or has committed an offense that warrants out-of-school suspension or expulsion from school according to the district school board's code of student conduct. For the purposes of this program, "disruptive behavior" is behavior that:
  - Interferes with the student's own learning or the educational process of others and requires attention and assistance beyond that which the traditional program can provide or results in frequent conflicts of a disruptive nature while the student is under the jurisdiction of the school either in or out of the classroom; or
  - Severely threatens the general welfare of students or others with whom the student comes into contact.

The school principal or his or her designee is required, prior to placement in a dropout prevention and academic intervention program or the provision of an academic service, provide written notice of placement or services by certified mail, return receipt requested, to the student's parent. The parent of the student is required to sign an acknowledgment of the notice of placement or service and return the signed acknowledgment to the principal within three days after receipt of the notice.[46]

Effect of Proposed Changes

The bill amends s. 1003.53, F.S., to authorize school districts to assign disruptive students to a disciplinary program or alternative-to-expulsion program. The bill authorizes a district school board to adopt a policy that allows a parent to agree to an alternative method of notification regarding a student's placement in a dropout prevention program or a suspension. The bill authorizes the agreement to be made before the need for the notification arises or at the time the notification is required.

[45] Section 1003.53(4), F.S. *See also* Rule 6A-6.0521, F.A.C.
[46] Section 1003.53, F.S.

The bill prohibits school districts from identifying students as eligible to receive services funded through the dropout prevention and academic intervention program based solely on a student having a disability. The bill requires that for each student enrolled in a dropout prevention and academic intervention program or school, an academic intervention plan must be developed to address eligibility for placement in the program, individualized student goals, and progress monitoring procedures. The academic intervention plan for exceptional student education students must be consistent with the student's individual education plan.

The bill modifies the requirement that district school boards submit specified dropout prevention and academic intervention program effectiveness information through an annual report to the Department of Education's database, to require reporting from districts that offer such programs rather than only those receiving state funds.

The bill requires that educators teaching at dropout prevention and academic intervention programs are certified under the law and rules of the State Board of Education.

Instructional Materials

Present Situation

Instructional Materials

The Florida Department of Education (DOE) facilitates the statewide instructional materials adoption process through evaluation of materials submitted by publishers and manufacturers. Expert reviewers chosen by the DOE must objectively evaluate materials based on alignment to Florida's state-adopted standards, accuracy, and appropriateness for age and grade level.[47] Based on reviewer recommendations of materials that are "suitable, usable, and desirable," the Commissioner of Education (commissioner) then selects and adopts instructional materials for each grade and subject under consideration.[48] Currently, there is not a required timeline for DOE to adopt or publish a list of adopted instructional materials, often leading to the overlapping of the state-level adoption and district-level adoption of instructional materials. The DOE must provide training to instructional materials reviewers on competencies for making valid, culturally sensitive, and objective recommendations regarding the content and rigor of instructional materials prior to the beginning of the review and selection process.[49]

Instructional materials publishers and manufacturers, as a part of both state and local approval processes, must electronically deliver to the DOE fully developed sample copies of all instructional materials to support the materials bids.[50]

Teacher Preparation Programs

Teacher preparation programs are accountable for producing individuals with the competencies and skills necessary to achieve the state education goals.[51] State-approved teacher preparation programs are offered by Florida public and private postsecondary institutions, public school

[47] Section 1006.31, F.S.
[48] Section 1006.34(2), F.S.
[49] Section 1006.29(5), F.S.
[50] Section 1006.38(2), F.S.
[51] Section 1004.04(1), F.S.

districts, and private providers by which candidates for educator certification can, depending on the type of program, demonstrate mastery of general knowledge, professional preparation and education competence, and/or subject area knowledge for purposes of attaining an educator certificate.[52]

There are various state-approved teacher preparation programs that individuals may use to receive the training needed to attain an educator certificate, including:

- Initial Teacher Preparation programs in public and private colleges and universities requiring candidates to demonstrate mastery of subject area knowledge in one or more specific subject areas(s), mastery of general knowledge, and mastery of professional preparation and education competence. Program completers qualify for a professional educator certificate.
- Educator Preparation Institutes (EPIs) offering alternative certification programs by postsecondary institutions and qualified private providers for baccalaureate degree holders. These programs provide professional preparation for career-changers and recent college graduates who do not already possess a Professional Educator Certificate and require mastery of general knowledge, mastery of subject area knowledge, and mastery of professional preparation and education competence.
- District professional development certification and education competency programs. Such programs are cohesive competency-based professional preparation certification programs offered by school districts, charter schools, and charter management districts by which the instructional staff can satisfy the mastery of professional preparation and education competence requirements. [53]

In addition to completing the district program, candidates must demonstrate mastery of general knowledge[54] and subject area knowledge.[55]

There are 57 initial teacher preparation programs in Florida, at 10 state universities, 19 Florida College System institutions, and 28 private colleges and universities.[56]

Effect of Proposed Changes

The bill amends s. 1006.38, F.S., to require instructional materials publishers and manufactures to make, sample student editions of instructional materials on the commissioner's list of state-adopted instructional materials electronically available, at a discount below publisher cost, for use by teacher preparation programs and by educator preparation institutes, for each adoption cycle. The bill requires that teacher preparation programs and educator preparation institutes that

[52] *See* Florida Department of Education (DOE), *Professional Development in Florida*, http://www.fldoe.org/teaching/professional-dev/ (last visited Jan 17, 2024). *See also* rule 6A-5.066, F.A.C.; ss. 1004.04(3)(a) and 1004.85(1), F.S.
[53] Florida DOE, *Educator Preparation*, http://www.fldoe.org/teaching/preparation (last visited Feb. 2, 2024). *See also* rule 6A-5.066, F.A.C.
[54] *See* Florida DOE, *General Knowledge*, https://www.fldoe.org/teaching/certification/general-cert-requirements/general-knowledge.stml (last visited Jan. 17, 2024).
[55] Florida DOE, *Subject Area Knowledge*, https://www.fldoe.org/teaching/certification/general-cert-requirements/subject-area-knowledge.stml (last visited Jan. 17, 2024).
[56] Florida Department of Education. *State-Approved Educator Preparation Programs, Colleges/Universities*, https://www.fldoe.org/teaching/preparation/initial-teacher-preparation-programs/approved-teacher-edu-programs.stml (last visited Feb. 2, 2024).

use samples to practice teaching are required to provide reasonable safeguards against unauthorized use, reproduction, and distribution of the sample copies of instructional materials.

School Improvement and School Grades

Present Situation

School Grades

School grades are used to explain a school's performance in a familiar, easy-to-understand manner for parents and the public.[57] School grades are also used to determine whether a school must select or implement a turnaround option[58] or whether a school is eligible for school recognition funds as appropriated by the Legislature.[59]

Elementary, middle and high schools each share a basic model for determining school grades, based on the percentage of total points earned by a school for each component in the model. Middle and high school models include additional components beyond the basic model. Combination school models include the additional components for the grades served (*e.g.*, a school serving grades k-12 would include the additional components for the middle and high school models). Each school must receive a school grade based on the school's performance on the following components:

- The percentage of eligible students passing statewide, standardized assessments in ELA, mathematics, science, and social studies.
- The percentage of eligible students who make learning gains in ELA and mathematics as measured by statewide, standardized assessments.
- The percentage of eligible students in the lowest 25 percent in ELA and mathematics, as identified by prior year performance on statewide, standardized assessments, who make learning gains as measured by statewide, standardized ELA assessments.
- For schools comprised of grade levels that include grade 3, the percentage of eligible students who score an achievement level 3 or higher on the grade 3 statewide, standardized ELA assessment.
- For schools comprised of middle grades 6 through 8 or grades 7 and 8, the percentage of eligible students passing high school level statewide, standardized end-of-course assessments or attaining national industry certifications identified in the CAPE Industry Certification Funding List pursuant to SBE rule.[60]

For a school comprised of grades 9-12, or 10-12 the school's grade is based on the following components:

- The 4-year high school graduation rate of the school.
- The percentage of students who were eligible to earn college and career credit in a specified acceleration mechanism, who earn a specified industry certification, or who participate in Junior Reserve Officers' Training Corps courses and earn a qualifying score on the Armed Services Vocational Aptitude Battery.

[57] Section 1008.34(1), F.S.
[58] *See* s. 1008.33(4), F.S.
[59] *See* s. 1008.36, F.S.
[60] *See* s. 1008.34(3), F.S.; *See also* Rule 6A-1.09981(4)(a)-(c), F.A.C.

The SBE must periodically review the school grading scale to determine if the scale should be adjusted upward to meet raised expectations and encourage increased student performance. The SBE must notify the public of any adjustments and explain the reasons for the adjustment and the impact it will have on school grades.[61]

School Improvement

Florida's system of improving low-performing schools is referred to as "school improvement" (SI). Under SI, the lowest-performing schools receive more comprehensive, state-provided intervention and support than schools that are closer to meeting student achievement goals. Intervention and support is required for traditional public schools earning a letter grade of "D," or "F."[62] Upon receipt of its first grade of "D," a school is considered a Tier I SI school in need of support and intervention from the school district.[63] Intensive intervention and support strategies must be applied through turnaround plans to schools earning two consecutive grades of "D" or a grade of "F."[64]

Schools that earn two consecutive grades of "D" or a grade of "F" must also implement a two-year district-managed turnaround plan.[65] The school district is required to submit:

- By September 1, the memorandum of understanding negotiated with the school district teacher union under an educational emergency.
- By October 1, district-managed turnaround plan to the State Board of Education (SBE) for approval.

The district-managed turnaround plan may include a proposal for the district to implement an extended school day, a summer program, or a combination of an extended school day and a summer program for SBE approval. A school district is not required to wait until a school earns a second consecutive grade of "D" to submit a turnaround plan for approval by the SBE.[66]
Once the district-managed turnaround plan is approved by the SBE, the school district must implement the plan for the remainder of the year and continue implementation for the next full school year. If the school's grade does not improve to a "C" or higher after the second year, the school must select from the following turnaround options:

- Reassign students to another school and monitor the progress of each student.
- Close the school and reopen as one or more charter schools with a governing board that has a demonstrated record of effectiveness.
- Contract with an external operator that has a demonstrated record of effectiveness to operate the school.[67]

[61] Section 1008.34(3), F.S.
[62] Section 1008.33, F.S.
[63] Rule 6A-1.099811(3), F.A.C.
[64] Section 1008.33(4), F.S.
[65] *Id.*; Rule 6A-1.099811(6), F.A.C.
[66] Section 1008.33(4), F.S.
[67] Section 1008.33(4), F.S.; rule 6-A 1.099811(6)(b), F.A.C

The SBE may allow a school an additional year of implementation before the school must implement a different turnaround option if it determines that the school is likely to improve to a grade of "C" or higher after the first full school year of implementation.[68]

In the 2023-2024 school year, there were 31 schools implementing a district-managed turnaround plan, one school implementing the charter school turnaround option, and one school implementing the external operator school turnaround option.[69]

Effect of Proposed Changes

The bill amends s. 1008.34, F.S., to require that beginning in the 2024-2025 school year, that if the SBE makes any changes to the school grades model or scale that the changes may not go into effect until the following school year, at the earliest.

The bill amends s. 1008.33, F.S., to change several provisions related to the school improvement process and school turnaround options.

The bill requires that, beginning in the 2025-2026 school year, a school that has received an initial grade of "F" or a second consecutive grade of "D" must provide the Department of Education (DOE) the district-managed turnaround plan and memorandum of understanding to the DOE by August, instead of the current dates of October 1 and September 1, respectively. The bill requires that the plan must include measureable academic benchmarks that put the school on a path to earning and maintaining a grade of "C" or higher.

The bill requires that if a school district chooses to close and reopen the school as one or more charter schools as part of its turnaround process, the school district must continue to operate the school for the following school year and no later than October 1, execute a charter school turnaround contract. This requirement allows the charter school an opportunity to conduct an evaluation of the educational program and personnel currently assigned to the school during the year in preparation for assuming full operational control of the school and facility by July 1. The bill requires that the school district may not reduce or remove resources from the school during this time. The bill requires charter schools to:

- Provide enrollment preference to students currently attending or who would have otherwise attended or been zoned for the school. The school district is required to consult and negotiate with the charter school every three years to determine whether realignment of the attendance zone is appropriate to ensure that students residing closest to the school are provided with an enrollment preference.
- Serve the existing grade levels served by the school at its current enrollment or higher but may, at its discretion, serve additional grade levels.

The bill requires that the school district may not withhold an administrative fee from the charter school for administrative and educational services specified in law. The school district also may not charge a rental or leasing fee for the existing facility or for the property normally inventoried to the school. The school and school district must agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to all other school facilities in the district.

[68] Section 1008.33(4)(a), F.S.
[69] Email, Florida Department of Education (Dec. 12, 2023).

Finally, the bill requires the SBE to adopt a standard charter school turnaround contract, standard facility lease, and mutual management agreement.

Dual Enrollment Programs

The dual enrollment program is the enrollment of an eligible secondary student or home education student in a postsecondary course creditable toward high school completion and a career certificate or an associate or baccalaureate degree. District school boards may not refuse to enter into a dual enrollment articulation agreement with a local Florida College System (FCS) institution if that FCS institution has the capacity to offer dual enrollment courses. Additionally, each district school superintendent and each public postsecondary institution president is required to develop a comprehensive dual enrollment articulation agreement for the respective school district and postsecondary institution.[70]

The dual enrollment articulation agreement must be completed and submitted annually by the postsecondary institution to the Department of Education on or before August 1. The agreement must include, but is not limited to:

- A description of the process by which students and their parents are informed about opportunities for student participation in the dual enrollment program.
- A delineation of courses and programs available to students eligible to participate in dual enrollment.
- Funding provision that delineates costs incurred by each entity.
- A description of the process by which students and their parents exercise options to participate in the dual enrollment program.
- A list of any additional initial student eligibility requirements for participation in the dual enrollment program.
- A delineation of the high school credit earned for the passage of each dual enrollment course.[71]

Students who are enrolled in grades 6 through 12 in a Florida public or private school that meets certain conditions and provides a secondary curriculum are eligible for dual enrollment, if they meet certain academic requirements. Eligible students may enroll in dual enrollment courses conducted during school hours, after school hours, and during the summer term.[72] In the 2022-2023 school year, 79,208 students were enrolled in a dual enrollment course.[73]

Effect of Proposed Changes

The bill amends s. 1007.217, F.S., to require that district school boards must make reasonable efforts to enter into dual enrollment articulation agreements with an FCS institution that offers online dual enrollment courses.

[70] Section 1007.271(1) F.S.
[71] Section 1007.271(21) F.S.
[72] Section 1007.271(2), F.S.
[73] Florida Department of Education, *Know Your School Portal*, https://edudata.fldoe.org/ReportCards/Schools.html?school=0000&district=00, (last visited Feb. 2, 2024).

Working Students

Present Situation

Nationally, about 74 percent of part-time undergraduate students and 40 percent of full-time students in the United States were employed in 2020, according to the most recent data from the National Center for Education Statistics. Being employed can help a student pay for classes and other living expenses; it can also be associated, either positively or negatively, with a student's academic performance.[74]

Overall, the percentages of undergraduates who worked at least 20 hours per week were higher for part-time students than for full-time students. Specifically, 40 percent of part-time students worked 35 or more hours, compared with 10 percent of full-time students. Additionally, 26 percent of part-time students worked 20 to 34 hours per week, compared with 15 percent of full-time students. In contrast, the percentages of undergraduates who worked less than 20 hours per week were higher for full-time students than for part-time students. Three percent of full-time undergraduates were employed less than 10 hours per week, and nine percent were employed 10 to 19 hours per week. In comparison, one percent of part-time students were employed less than 10 hours per week and six percent were employed 10 to 19 hours per week.[75]

Foreign Country of Concern

Under Florida statute, a "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 under significant control of such foreign country of concern.[76]

Effect of Proposed Changes

The bill creates s. 1004.051, F.S., to prohibit a public postsecondary institution from implicitly or explicitly prohibiting applicants or currently enrolled students from being employed, either full time or part time, as a condition of admission to or enrollment in any of the institution's schools, colleges, or programs.

The prohibition on employment does not apply if the applicant or currently enrolled student is employed by an organization or agency that is affiliated or associated with a foreign country of concern.

[74] National Center for Education Statistics, *College Student Employment* (May 2022), https://nces.ed.gov/programs/coe/indicator/ssa/college-student-employment#:~:text=Many%20undergraduate%20students%20ages%2016,time%20students%20(40%20percent (last visited Feb 2, 2024).
[75] *Id*.
[76] Section 288.860(1)(a), F.S.

Florida College System Tuition for Out-of-State Students

Present Situation

The standard tuition rate for Florida College System (FCS) institutions is currently set in statute at $71.98 per credit hour for advanced and professional, postsecondary vocational, developmental education, and educator preparation institute programs and the out-of-state fee is $215.94 per credit hour.[77]

For baccalaureate degree programs, tuition is set at $91.79 per credit hour for students who are considered residents for tuition purposes.[78] The per credit hour for students who are considered non-residents for tuition purposes cannot exceed more than 85 percent of the sum of the tuition and out-of-state fee at the state university nearest the FCS institution.[79] For the 2022-2023 academic year, the average annual cost for the academic year for students taking 30 credit hours was $3,206.[80]

The board of trustees at each FCS institution is authorized to establish a separate fee for capital improvements, technology enhancements, equipping student buildings, or the acquisition of improved real property which may not exceed 20 percent of the tuition for resident students or 20 percent of the sum of tuition and out-of-state fees for nonresident students.[81]

In the 2022-2023 FCS academic year, 430,985 students were considered a resident for tuition purposes and 44,041 students were considered a nonresident for tuition purposes.[82]

Effect of Proposed Change

The bill amends s. 1009.23, F.S., to provide that beginning with the 2024-2025 academic year, Miami Dade College, Polk State College, and Tallahassee Community College are authorized to charge an amount not to exceed $290 per credit hour for nonresident tuition and fees for distance learning. The bill also allows such FCS institutions to phase in the nonresident tuition rate by degree program.

Specialized Transfer Degrees

Present Situation

Florida's 28 state and community colleges offer a wide range of academic opportunities for students throughout the state. At Florida College System (FCS) institutions, students are able to complete degree programs including Bachelor of Science and Bachelor of Applied Science,

[77] Section 1009.23(3)(a),F.S.
[78] Section 1009.23(3)(b)1., F.S.
[79] Section 1009.23(3)(b)2., F.S.
[80] *See* The Florida Department of Education "College and Textbook Affordability in the Florida College System 2023," at 2-3.
[81] Section 1009.23(11)(a)
[82] The Florida Department of Education, Division of Florida Colleges, FCS Resident and Nonresident Enrollment Report 2022-2023, https://www.fldoe.org/schools/higher-ed/fl-college-system/about-us/policy-data.stml, (last visited Feb 8, 2024).

Associate in Arts (AA), Associate in Science (AS), Associate in Applied Science (AAS), and career and technical certificate programs.[83]

Associate in Arts Degree

The AA degree is designed for students who plan to transfer from an FCS institution to a baccalaureate degree program, either at an FCS or a state university system (SUS) institution.[84] The AA degree requirements consist of 60 total credit hours and include 36 credit hours of general education and 24 credit hours of electives.[85] Students should choose elective courses required for admission to their intended program of study or major at the desired college or university. The Common Prerequisites Manual[86] is a catalog of lower-level courses that are prerequisites for entrance into baccalaureate programs offered by FCS and SUS institutions. Students are encouraged to discuss their intended program of study with an academic advisor at their college to ensure they are meeting all requirements to transfer upon completing their AA degree.[87]

A baccalaureate degree must be no more than 120 semester hours of college credit, unless prior approval has been granted by the BOG or the SBE, as applicable, and include 36 semester hours of general education coursework.[88]

General Education Core Courses

Students entering an FCS or SUS institution are required to complete at least one identified general education core course in each of the subject areas of communication, mathematics, social sciences, humanities, and natural sciences. All public postsecondary educational institutions are required to accept these courses as meeting general education core course requirements.[89]

General education core course options consist of a maximum of five courses in each identified subject area, but may exceed that limit with the approval of the SBE or the BOG. The general education core courses are established in SBE rule[90] and BOG regulation.[91]

Transfer of General Education Courses

Each public postsecondary institution must accept transfer general education core courses taken at another institution. After completing the general education core course requirements, the remaining courses and credits that fulfill the total 36-hour general education requirement for an AA or baccalaureate degree are at the discretion of the FCS or SUS institution.[92]

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[83] DOE, Florida College System (FCS), *Academics*, https://www.fldoe.org/schools/higher-ed/fl-college-system/academics/ (last visited Feb. 2, 2024).
[84] *Id.*
[85] Section 1007.25(9), F.S.
[86] Florida Shines, *Common Prerequisites Manual*, https://cpm.flvc.org/advance-search (last visited Feb. 2, 2024).
[87] DOE, FCS, *Academics*, https://www.fldoe.org/schools/higher-ed/fl-college-system/academics/ (last visited Feb. 2, 2024).
[88] Section 1007.25(10), F.S.
[89] Section 1007.25, F.S
[90] Rule 6A-14.0303, F.A.C.
[91] Board of Governors Regulation 8.005.
[92] *Id.* and r. 6A -14.0303(5), F.A.C.

General education programs in Florida, while consistent with the general education core requirements and the total of 36 hours for completion, vary in the selection of institutionally-required courses. Students who transfer with an AA or AS degree or who have completed their block of 36 general education hours do not have to meet the receiving institution's general education program requirements. If a student does not complete the total 36-hour general education curriculum prior to transfer, each course, outside of courses taken as general education courses, will be reviewed individually to determine if it meets the general education requirements of the new institution.[93]

Articulation Coordinating Committee

The commissioner, in consultation with the Chancellor of the SUS, establishes the Articulation Coordinating Committee (ACC), whose primary role is to recommend statewide articulation policies. Specifically, the ACC must monitor articulation between education systems, propose guidelines for articulation agreements, publish lists of general education and common prerequisite courses, establish dual enrollment course equivalencies to high school credit, and annually review the Statewide Articulation Agreement. The Office of K-20 Articulation within the DOE provides administrative support to the ACC.[94]

Statewide Articulation Agreements

Each state university board of trustees, FCS institution board of trustees, and district school board must plan and adopt policies and procedures to provide articulated programs so that students can proceed toward their educational objectives as rapidly as their circumstances permit.[95]

Statewide articulation agreements help facilitate the seamless transition of students across and among Florida's educational entities. These agreements are intended to be a minimum guarantee of articulated credit and do not preclude institutions from granting additional credit based on local agreements.[96]

Effect of Proposed Changes

The bill amends s. 1007.25, F.S., to create a new Associates in Arts (AA) specialized transfer degree. The specialized transfer degrees are designed for FCS institution students who need supplemental lower-level coursework above the 60 credit hours of the traditional AA degree in preparation for transfer to a baccalaureate degree program. An AA specialized transfer degree must include 36 semester hours of general education coursework and require 60 semester hours or more of college credit.

The bill requires the SBE to establish criteria for the review and approval of new specialized transfer degrees. The approval process must require:

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[93] DOE, *Statewide Postsecondary Articulation Manual* (Jan. 2021), at 15, *available at* https://www.fldoe.org/core/fileparse.php/5421/urlt/Statewide-Articulation-Manual.pdf. (last visited Feb. 2, 2024).
[94] Section 1007.01(3), F.S.; s. 20.15(3)(h), F.S.
[95] Rule 6A-10.024(1), F.A.C.
[96] DOE, *Statewide Postsecondary Articulation Manual* (Jan. 2021), at 20-21, *available at* https://www.fldoe.org/core/fileparse.php/5421/urlt/Statewide-Articulation-Manual.pdf. (last visited Feb. 2, 2024) *See also* r. 6A-10.024(2)(c), F.A.C.

- An FCS institution to submit a notice of its intent to propose a new AA specialized degree program to the Division of Florida Colleges. The notice must include the recommended credit hours, the rationale for the specialization, the demand for students entering the field, and the coursework being proposed to be included beyond the 60 semester hours required for the general transfer degree, if applicable. Notices of intent may be submitted by an FCS institution at any time.
- The Division of Florida Colleges to forward the notice of intent within 10 business days after receipt to all FCS institutions and the Chancellor of the SUS, who must forward the notice to all state universities. State universities and FCS institutions have 60 days after receipt of the notice to submit comments to the proposed AA specialized transfer degree.
- After the submission of comments, the requesting FCS institution to submit a proposal that, at a minimum, includes:
  - Evidence that the coursework for the AA specialized transfer degree includes demonstration includes demonstration of competency in a foreign language[97] and demonstration of civic literacy competency.
  - Demonstration that all required coursework will count toward the AA degree or the baccalaureate degree.
  - An analysis of demand and unmet need for students entering the specialized field of study at the baccalaureate level.
  - Justification for the program length if it exceeds 60 credit hours, including references to the Common Prerequisite Manual or other requirements for the baccalaureate degree. This includes documentation of alignment between the exit requirements of an FCS institution and the admissions requirements of a baccalaureate program at a state university to which students would typically transfer.
  - Articulation agreements for graduates of the AA specialized transfer degree.
  - Responses to the comments received.

The Division of Florida Colleges must review the proposal and, within 30 days after receipt, provide written notification to the FCS institution of any deficiencies and provide the institution with an opportunity to correct the deficiencies. Within 45 days after receipt of a completed proposal by the Division of Florida Colleges, the commissioner must recommend approval or disapproval of the new specialized transfer degree to the SBE. The SBE must consider the recommendation at its next meeting.

Upon approval of an AA specialized transfer degree by the SBE, an FCS institution may offer the degree and must report data on student and program performance in a manner prescribed by the DOE.

The bill requires the SBE to adopt rules to prescribe format and content requirements and submission procedures for notices of intent, proposals, and compliance reviews for the AA specialized transfer degree.

[97] Section 1007.262, F.S.

Florida College System Institution Employment Equity Plan

Each Florida College System (FCS) institution is required to include in its annual equity update, a plan for increasing the representation of women and minorities in senior-level administrative positions and in full-time faculty positions, and for increasing the representation of women and minorities who have attained continuing-contract status. The plan is required to include specific measurable goals and objectives, specific strategies and timelines for accomplishing these goals and objectives, and comparable national standards as provided by the Department of Education. The goals and objectives are based on meeting or exceeding comparable national standards and are reviewed and recommended by the State Board of Education as appropriate. The plans must be maintained until appropriate representation has been achieved and maintained for at least three consecutive reporting years.

The plan must show the following information for certain positions, but not limited to:[98]

- Job classification title.
- Gender.
- Ethnicity.
- Appointment status.
- Salary information. At each Florida College System institution, salary information shall also include the salary ranges in which new hires were employed compared to the salary ranges for employees with comparable experience and qualifications.
- Other comparative information including, but not limited to, composite information regarding the total number of positions within the particular job title classification for the Florida College System institution by race, gender, and salary range compared to the number of new hires.
- A statement certifying diversity and balance in the gender and ethnic composition of the selection committee for each vacancy, including a brief description of guidelines used for ensuring balanced and diverse membership on selection and review committees.

Florida's K-12 public institutions and institutions within the state university system are not required to complete a similar report.

Effect of Proposed Changes

The bill repeals s. 1012.86, F.S., to delete the requirement of the FCS Institution Employment Equity Accountability Program.

Residency Status for Tuition Purposes

Present Situation

Students must be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers, career centers operated by school districts, Florida College System (FCS) institutions, and state universities. Students pay differing tuition rates based on their status as a resident or nonresident of Florida.[99]

[98] Section 1012.86, F.S.
[99] Section 1009.21. F.S.

Specifically, to qualify as a resident for tuition purposes:

- A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education.
- Every applicant for admission to an institution of higher education must make a statement as to his or her length of residence and establish that his or her presence or, if the applicant is a dependent child, the presence of his or her parent or parents in Florida currently is, and during the requisite 12-month qualifying period was, for the purpose of maintaining a bona fide domicile.[100]

A person must show certain proof that he or she should be classified as a resident for tuition purposes and may not receive the in-state tuition rate until clear and convincing evidence related to legal residence and its duration has been provided. Each institution of higher education must make a residency determination that is documented by the submission of written or electronic verification that includes two or more specified documents that:

- Must include at least one of the following:
  - A Florida voter's registration card.
  - A Florida driver license.
  - A State of Florida identification card.
  - A Florida vehicle registration.
  - Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child.
  - Proof of a homestead exemption in Florida.
  - Transcripts from a Florida high school for multiple years if the Florida high school diploma or high school equivalency diploma was earned within the last 12 months.
  - Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.
- May include one or more of the following:
  - A declaration of domicile in Florida.
  - A Florida professional or occupational license.
  - Florida incorporation.
  - A document evidencing family ties in Florida.
  - Proof of membership in a Florida-based charitable or professional organization.
  - Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official state, federal, or court document evidencing legal ties to Florida.[101]

Effect of Proposed Changes

The bill amends s. 1009.21, F.S., to provide that proof of a homestead exemption can be used as a single, conclusive piece of evidence proving residency for tuition purposes.

[100] Section 1009.21(2), F.S.
[101] Section 1009.21(3), F.S.

Stanley G. Tate Florida Prepaid College Program

Present Situation

The Stanley G. Tate Florida Prepaid College Program (Prepaid Program) was created to assist families to prepay the future cost of college tuition through advance payment contracts (Prepaid Plans). At the time of purchase, Prepaid Plans guarantee the future payment of certain costs associated with attendance at a postsecondary institution. Additionally, the benefits, in some cases, can be utilized at in-state private institutions and at out-of-state public and private colleges and universities that are able to accept Title IV funding (i.e., federal student aid).[102]

The administration of the prepaid program is overseen by the Florida Prepaid College Board (board). In its role as the administrator of the trust fund, the board is responsible for managing it in a financially sound manner, ensuring stability based on actuarial principles.[103] Over the past 35 years, the board has managed the largest and most successful prepaid program among similar initiatives enabling more than 626,000 students to attend college using the prepaid plans.[104]

The costs associated with attending a postsecondary institution encompass tuition and various fees designed to contribute to the overall operational expenses of the institution.[105] One such fee, known as the tuition differential fee, is charged by 11 of the 12 state universities. The tuition differential fee is intended to promote improvements in the quality of undergraduate education and provide financial aid to undergraduate students who exhibit financial need.[106]

By statute, for the 2012-2013 fiscal year, the base rate for the tuition differential fee was established at $37.03 per credit hour. In subsequent years, the statute requires this base rate to be adjusted based on the amount assessed for the tuition differential in the preceding year. The adjustments are as follows:

- If the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board pays the state universities 5.5 percent above the base rate for the tuition differential fee in the preceding fiscal year.
- If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board pays the state universities 6 percent above the base rate for the tuition differential fee in the preceding fiscal year.
- If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board pays the state universities 6.5 percent above the base rate for the tuition differential fee in the preceding fiscal year.
- If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board pays the state universities 7 percent above the base rate for the tuition differential fee in the preceding fiscal year.[107]

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[102] Section 1009.98, F.S.
[103] Section 1009.971, F.S.
[104] Florida Prepaid, *Our History*, https://www.myfloridaprepaid.com/about-us/our-history/ (last visited Feb. 2, 2023).
[105] Florida Prepaid, *All About Florida College and State University Fees*, https://www.myfloridaprepaid.com/existing-customers/tuition-and-fees/ (last visited Feb. 2, 2024).
[106] Section 1009.24(16), F.S.; *see also* State University System of Florida, *Tuition and Required Fees* (2023-2024), *available at* https://www.flbog.edu/wp-content/uploads/2023/07/2023-2024-SUS-Tuition-and-Fees-Report-PDF-1.pdf. (last visited Feb. 2, 2024).
[107] Section 1009.98, F.S.

Qualified beneficiaries of Prepaid Plans purchased before July 1, 2007, are exempt from paying any tuition differential fee.

Effective with the 2009-2010 academic year and thereafter, in addition to the differential fees, other fees are paid by the board to any state university on behalf of a qualified beneficiary of the Prepaid Plan, whose contract was purchased before July 1, 2024. Among these fees are:

- Registration Fee:
  - If the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board will pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year.
  - If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year.
  - If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year.
  - If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.
- Local Fees: The board is required to pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.[108]

Regardless of the specific amount assessed for registration fees, tuition differential, local fees, or dormitory fees, the board's payment to a state university on behalf of a qualified beneficiary, covered by a Prepaid Plan purchased before July 1, 2024, cannot exceed 100 percent of the total fees charged by the state university. The board will pay state universities the actual amount assessed for the registration fees, the tuition differential, local fees and dormitory fees for Prepaid Plans purchased on or before July 1, 2024.

Regardless of credit hours used for fee assessment, the board's payment for Prepaid Plans purchased before July 1, 2024, cannot exceed the actual number of credit hours taken by the qualified beneficiary at the state university.[109]

Effect of Proposed Changes

The bill amends s. 1009.98, F.S., to transition the effective period for the amount paid by the Florida Prepaid College Board to state universities on behalf of qualified beneficiaries of advance payment contracts within the Prepaid Florida Program from 2009-2010 to 2022-2023. Additionally, it extends the applicability of the contracts to those purchased before July 1, 2034.

The bill clarifies that the base rate is the amount assessed.

The bill also removes obsolete language in regards to the differential fee amount paid for the 2012-2013 fiscal year.

[108] Section 1009.98(10), F.S.
[109] *Id.*

Florida College System and State University System Board of Trustees

Present Situation

Florida College System Board of Trustees

Members of a Florida College System (FCS) institution's board of trustees are appointed by the Governor to staggered 4-year terms and subject to confirmation by the Senate.[110] The number members on the board of trustees for a FCS institution is based on the following:

- An FCS institution has five board members when a FCS institution district is confined to one school board district.
- An FCS institution may not have more than nine members when the district contains two or more school board districts, as provided by rules of the State Board of Education.[111]
- An FCS institution may have seven members when a FCS institution district is confined to one school board district and the board of trustees so elects.[112]

Members of the board of trustees for a FCS institution receive no compensation but can be reimbursed for travel and per diem expenses.[113]

State University System Board of Trustees

Each university in the state university system is administered by a university board of trustees, who serve staggered 5-year terms, are comprised of 13 members as follows:

- Six citizen members appointed by the Governor subject to confirmation by the Senate.
- Five citizen members appointed by the Board of Governors subject to confirmation by the Senate.
- The chair of the faculty senate or the equivalent.
- The president of the student body of the university.[114]

Members of the board of trustees for a university in the state university system receive no compensation but can be reimbursed for travel and per diem expenses.[115]

Standard of Conduct for Public Officers

A public officer acting in his or her official capacity, may not either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor may a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or

[110] Section 1001.61, (3), F.S.
[111] Rule 6A-14.024, F.A.C., was repealed in 2019.
[112] Section 1001.61,(1), F.S. Florida State College at Jacksonville is required to have an odd number of trustees, and St. Johns River State College is required to have seven trustees from the three-county area that the college serves.
[113] Section 1001.61(3), F.S.
[114] Section 1001.71(1), F.S.
[115] Section 1001.71(2), F.S.

to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.[116]

Effect of Proposed Changes

The bill amends ss. 1001.61 and 1001.71, F.S., to prohibit a member of an FCS institution or state university board of trustees from doing business or have any business affiliation with any institution under his or her purview while he or she is a member of the board of trustees.

Educator Certification

Present Situation

Educational personnel in public schools must possess appropriate skills in reading, writing, and mathematics; adequate pedagogical knowledge; and relevant subject matter competence to demonstrate an acceptable level of professional performance.[117] For a person to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Department of Education (DOE).[118]

The State Board of Education (SBE or state board) designates the certification subject areas, establishes competencies, and adopts rules by which educator certificates are issued by the DOE to qualified applicants.[119]

General Eligibility

To seek educator certification, a person must attest to uphold the principles of the United States and meet other general eligibility requirements, which include receipt of a bachelor's or higher degree from an approved postsecondary institution and minimum age, background screening, moral character, and competence requirements.[120]

Professional Educator Certificate

A professional teaching certificate is valid for five school fiscal years and is renewable. A professional certificate is awarded to an applicant who meets the basic eligibility requirements for certification and demonstrates mastery of:

- General knowledge.
- Subject area knowledge.
- Professional preparation and education competence.[121]

Adjunct Educators

District school boards and charter school governing boards may adopt rules to allow for the issuance of an adjunct teaching certificate to any applicant who fulfills the educator certificate general, subject matter, and background screening requirements and who has expertise in the

[116] Section 113.313(3), F.S.
[117] Section 1012.54, F.S.
[118] Sections 1012.55(1) and 1002.33(12)(f), F.S.
[119] Section 1012.55(1) (a), F.S.
[120] Section 1012.56(2)(a)-(f), F.S., and Rule 6A-4.003, F.A.C.
[121] Section 1012.56(2)(g)-(i), F.S.

subject area to be taught. Adjunct certificate holders are required to be used primarily as a strategy to enhance the diversity of course offerings offered to all students.[122] An applicant is considered to have expertise in the subject area to be taught if the applicant demonstrates sufficient subject area mastery through passage of a subject area test or has achieved an industry certification in the subject area to be taught.[123]

Effect of Proposed Changes

The bill amends s. 1012.55, F.S., to require the SBE to adopt rules to allow for the issuance of a classical education teaching certificate. Upon the request of a classical school, the DOE will issue a classical education teaching certificate to any applicant who fulfills the requirements for a professional certificate except for demonstrating mastery of general knowledge, subject area knowledge, and professional preparation and education competence. Teachers who teach in classical learning models will demonstrate competency through the classical model of professional learning provided by the school and any other criteria established by the DOE. This certificate is only valid at a classical school.

The bill defines a "classical school" as a school that implements and provides professional learning in a classical education school model that emphasizes the development of students in the principles of moral character and civic virtue through a well-rounded education in the liberal arts and sciences that is based on the classical trivium stages of grammar, logic, and rhetoric.

Education Practices Commission

Present Situation

The Department of Education's (DOE's) Office of Professional Practices Services (OPPS) investigates misconduct by educators who hold a Florida Educator Certificate or a valid application for a Florida Educator Certificate. The OPPS investigates when there are ultimate facts to support the educator has broken the law or violated the Principles of Professional Conduct. These laws and rules outline the standards of conduct expected of certified educators in Florida.[124]

Penalties against an educator's certificate are not issued by the Commissioner of Education (commissioner) or the DOE; penalties are issued by the Education Practices Commission (commission). The commission is a quasi-judicial body of peers, law enforcement, and lay persons set forth in statute[125] that determines what penalty is issued in each case.[126]

Currently, the commission must employ an executive director by a vote of three-fourths of the membership who is exempt from career service and may be dismissed by a majority vote of the membership. The commission is assigned to the DOE for administrative purposes and, in the

[122] Section 1012.57(3), F.S.
[123] Section 1012.57(1), F.S.
[124] DOE, *Role of Professional Practices Services*, https://www.fldoe.org/teaching/professional-practices/role-of-professional-practices-service.stml (lasted visited Feb. 2, 2024).
[125] Section 1012.79, F.S.
[126] DOE, *Role of Professional Practices Services*, https://www.fldoe.org/teaching/professional-practices/role-of-professional-practices-service.stml (lasted visited Feb. 2, 2024).

performance of its powers and duties, must not be subject to control, supervision, or direction by the DOE.[127]

The commission has the authority to make expenditures necessary to carry out its duties and responsibilities, including for personal services, general counsel or access to counsel, and rent at the seat of government and elsewhere; for books of reference, periodicals, furniture, equipment, and supplies; and for printing and binding. The expenditures of the commission are subject to the powers and duties of the Department of Financial Services.[128]

Effect of Proposed Changes

The bill amends s. 1012.79, F.S., to authorize the commissioner to appoint and remove the executive director of the Education Practices Commission (commission). The bill also requires the commission to be assigned to the Department of Education for fiscal accountability purposes and that the commission may make expenditures on legal services.

The bill takes effect July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[127] Section 1012.79(5)-(6)(a), F.S.
[128] Sections 17.03 and 1012.79(9), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is an indeterminate fiscal impact for the Department of Education (DOE) to establish the Purple Star School District Program. The school districts could also incur a cost to provide the required webpage.

There is an indeterminate fiscal impact to the DOE and the Florida College System (FCS) for the creation of the new Associates in Arts (AA) specialized transfer degree.

There could be a negative fiscal impact to the FCS institutions for the inability to charge the current out-of-state tuition and fee rates for nonresident distance learners. The bill allows FCS institutions to phase in the nonresident tuition rate by degree program.

No agency analysis has been provided at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 192.0105, 192.048, 196.011, 196.082, 1001.61, 1001.71, 1001.64, 1001.65, 1002.33, 1002.42, 1002.45, 1003.451, 1003.53, 1006.38, 1007.25, 1007.271, 1008.33, 1008.34, 1009.21, 1009.23, 1009.98, 1012.55 and 1012.79.

This bill creates the following sections of the Florida Statutes: 1003.052 and 1004.051.

This bill repeals section 1012.86 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/CS/CS by Fiscal Policy Committee on February 15, 2024:
The committee substitute:

- Specifies that a member of a Florida College System or State University System board of trustees may not do business or have any business affiliation with any institution under his or her purview.

- Authorizes a charter school within a development, to target enrollment to students whose parents work in or near the development.
- Requires that for a private school using a specified facility to be exempt from special exception, rezoning, land use change, or mitigation requirements the facility must be located on property used solely for the purposes of that facility.
- Specifies that only Miami Dade College, Tallahassee Community College, and Polk State College are authorized to charge an amount not to exceed $290 per credit hour for nonresident tuition and fees for distance learning.
- Requires the State Board of Education to adopt rules for a classical education teaching certificate, upon the request of a classical school. An applicant for the classical education teaching certificate must meet specified requirements already in law, and any other criteria established by the Department of Education.
- Requires that publishers make sample student editions of instructional materials on the list of state-adopted instructional materials, electronically available, at a discount below publisher cost, for use by teacher preparation programs and by educator preparation institutes.

CS/CS by Appropriations Committee on Education on February 8, 2024:
The committee substitute:

- Defines a classical school and authorizes an enrollment preference at classical charter schools for students who were previously enrolled in a public school that implemented a classical school model.
- Provides that a private school may use certain facilities, under the facility's preexisting zoning and land use designations and without having to implement any mitigation requirements or conditions, if the facility was actively used within the past five years.
- Restores current law that proof of homestead exemption is a single conclusive piece of evidence proving residency for tuition purposes, instead of an application for a property tax exemption approved by a property appraiser.
- Authorizes Florida College System institutions to charge an amount not to exceed $290 per credit hour for nonresident tuition and fees for distance learning.

CS by Education Pre-K-12 on January 29, 2024:
The committee substitute:

- Maintains the authority of school districts to operate "second chance schools."
- Authorizes alternate methods of communicating to parents regarding placement into a dropout prevention and academic intervention program.
- Provides that, beginning in school year 2024-2025, any changes made by the state board to components in the school grades model or to the school grading scale go into effect, at the earliest, in the following school year.
- Clarifies that it is not necessary to make an annual application for exemption on property used to house a charter school.
- Provides students in grades 11 and 12 an opportunity to take the Armed Services Vocational Aptitude Battery (ASVAB) and consult with a military recruiter during the school day.

- Allows documentation of the homestead exemption as a single piece of evidence proving residency for tuition purposes.
- Repeals the Florida College System's employment equity and accountability program.
- Requires that dual enrollment articulation agreements include consideration of online courses.
- Transitions the effective period for the amount paid by the Florida Prepaid College Board to state universities on behalf of qualified beneficiaries of advance payment contracts within the Prepaid Florida Program from 2009-2010 to 2022-2023.
- Creates a new Associates of Arts (AA) specialized transfer degree for students who need additional credit above the 60 hours in preparation for transfer to a baccalaureate degree program.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
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The Committee on Fiscal Policy (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 289 - 390
and insert:
Section 5. Subsection (3) of section 1001.61, Florida Statutes, is amended to read:
1001.61 Florida College System institution boards of trustees; membership.—
(3) Members of the board of trustees shall receive no compensation but may receive reimbursement for expenses as

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provided in s. 112.061. A member may not do business or have any business affiliation with any institution under his or her purview in the Florida College System while he or she is a member of a Florida College System institution's board of trustees.

Section 6. Subsection (2) of section 1001.71, Florida Statutes, is amended to read:

1001.71 University boards of trustees; membership.—

(2) Members of the boards of trustees shall receive no compensation but may be reimbursed for travel and per diem expenses as provided in s. 112.061. A member may not do business or have any business affiliation with any institution under his or her purview in the State University System while he or she is a member of a state university's board of trustees.

Section 7. Paragraphs (d) and (e) of subsection (10) and paragraph (a) of subsection (24) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(10) ELIGIBLE STUDENTS.—

(d) A charter school may give enrollment preference to the following student populations:

1. Students who are siblings of a student enrolled in the charter school.

2. Students who are the children of a member of the governing board of the charter school.

3. Students who are the children of an employee of the charter school.

4. Students who are the children of:

a. An employee of the business partner of a charter school-

in-the-workplace established under paragraph (15)(b) or a resident of the municipality in which such charter school is located; or

b. A resident or employee of a municipality that operates a charter school-in-a-municipality pursuant to paragraph (15)(c) or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.

5. Students who have successfully completed, during the previous year, a voluntary prekindergarten education program under ss. 1002.51-1002.79 provided by the charter school, the charter school's governing board, or a voluntary prekindergarten provider that has a written agreement with the governing board.

6. Students who are the children of an active duty member of any branch of the United States Armed Forces.

7. Students who attended or are assigned to failing schools pursuant to s. 1002.38(2).

8. Students who are the children of a safe-school officer, as defined in s. 1006.12, at the school.

9. Students who transfer from a classical school in this state to a charter classical school in this state. For purposes of this subparagraph, the term "classical school" means a traditional public school or charter school that implements a classical education model that emphasizes the development of students in the principles of moral character and civic virtue through a well-rounded education in the liberal arts and sciences which is based on the classical trivium stages of grammar, logic, and rhetoric.

(e) A charter school may limit the enrollment process only

to target the following student populations:

1. Students within specific age groups or grade levels.

2. Students considered at risk of dropping out of school or academic failure. Such students shall include exceptional education students.

3. Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality established pursuant to subsection (15).

4. Students residing within a reasonable distance of the charter school, as described in paragraph (20)(c). Such students shall be subject to a random lottery and to the racial/ethnic balance provisions described in subparagraph (7)(a)8. or any federal provisions that require a school to achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other nearby public schools.

5. Students who meet reasonable academic, artistic, or other eligibility standards established by the charter school and included in the charter school application and charter or, in the case of existing charter schools, standards that are consistent with the school’s mission and purpose. Such standards shall be in accordance with current state law and practice in public schools and may not discriminate against otherwise qualified individuals. A school that limits enrollment for such purposes must place a student on a progress monitoring plan for at least one semester before dismissing such student from the school.

6. Students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor.

7. Students living in a development, or students whose parent or legal guardian maintains a physical or permanent employment presence within the development, in which a developer, including any affiliated business entity or charitable foundation, contributes to the formation, acquisition, construction, or operation of one or more charter schools or charter school facilities and related property in an amount equal to or having a total appraised value of at least $5 million to be used as charter schools to mitigate the educational impact created by the development of new residential dwelling units. Students living in the development are entitled to 50 percent of the student stations in the charter schools. The students who are eligible for enrollment are subject to a random lottery, the racial/ethnic balance provisions, or any federal provisions, as described in subparagraph 4. The remainder of the student stations must be filled in accordance with subparagraph 4.

8. Students whose parent or legal guardian is employed within a reasonable distance of the charter school, as described in paragraph (20)(c). The students who are eligible for enrollment are subject to a random lottery.

(24) RESTRICTION ON EMPLOYMENT OF RELATIVES.—

(a) This subsection applies to charter school personnel in a charter school operated by a private entity. As used in this subsection, the term:

1. "Charter school personnel" means a ~~charter school owner,~~ president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school

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who has equivalent decisionmaking authority and in whom is vested the authority, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in a charter school, including the authority as a member of a governing body of a charter school to vote on the appointment, employment, promotion, or advancement of individuals.

2. "Relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

Charter school personnel in schools operated by a municipality or other public entity are subject to s. 112.3135.

Section 8. Subsection (19) is added to s. 1002.42, Florida Statutes, to read:

1002.42 Private schools.—

(19) FACILITIES.—

(a) A private school may use facilities on property owned or leased by a library, community service organization, museum, performing arts venue, theatre, cinema, or church facility under s. 170.201, which is or was actively used as such within 5 years of any executed agreement with a private school to use the facilities; any facility or land owned by a Florida College System institution or university; any similar public institutional facilities; and any facility recently used to

house a school or child care facility licensed under s. 402.305, under any such facility's preexisting zoning and land use designations without rezoning or obtaining a special exception or a land use change, and without complying with any mitigation requirements or conditions. The facility must be located on property used solely for purposes described in this paragraph, and must meet applicable state and local health, safety, and welfare laws, codes, and rules, including firesafety and building safety.

(b) A private school may use facilities on property purchased from a library, community service organization, museum, performing arts venue, theatre, cinema, or church facility under s. 170.201, which is actively or was actively used as such within 5 years of any executed agreement with a private school to purchase the facilities; any facility or land owned by a Florida College System institution or university; any similar public institutional facilities; and any facility recently used to house a school or child care facility licensed under s. 402.305, under any such facility's preexisting zoning and land use designations without obtaining a special exception, rezoning, or a land use change, and without complying with any mitigation requirements or conditions. The facility must be located on property used solely for purposes described in this paragraph, and must meet applicable state and local health, safety, and welfare laws, codes, and rules, including firesafety and building safety.

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

And the title is amended as follows:

Delete lines 9 - 14

and insert:

providing penalties; amending ss. 1001.61 and 1001.71, F.S.; prohibiting members of the board of trustees of a Florida College System institution or a state university, respectively, from doing business with or having any business affiliation with any institution under their purview during their membership; amending s. 1002.33, F.S.; providing that students who transfer from certain classical schools to certain charter classical schools may be included as a student population to whom charter schools may give enrollment preference; defining the term "classical school"; revising the list of student populations that may be targeted for enrollment by a charter school by limiting the enrollment process; revising the

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
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The Committee on Fiscal Policy (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 607 - 612
and insert:
(3) Make sample student editions of instructional materials on the commissioner's list of state-adopted instructional materials electronically available, at a discount below publisher cost, for use by teacher preparation programs and by educator preparation institutes as defined in ss. 1004.04 and 1004.85(1), respectively, for each adoption cycle, to enable

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educators to practice teaching with currently adopted instructional materials aligned to state academic standards.

(a) Teacher preparation programs and educator preparation institutes that use samples to practice teaching shall provide reasonable safeguards against the unauthorized use, reproduction, and distribution of the sample copies of instructional materials.

(b) Notwithstanding s. 1006.38(5), publishers may make sample student editions of adopted instructional materials available at a discounted price to teacher preparation programs and educator preparation institutes for the instructional purpose of educators practicing with current materials.

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

And the title is amended as follows:

Delete lines 53 - 56

and insert:

or their representatives to make sample student editions of specified instructional materials available electronically for use by certain programs and institutes for a specified purpose; requiring teacher preparation programs and educator preparation institutes that use sample student editions to meet certain requirements; authorizing publishers to make available at a discounted price sample student editions of specified instructional materials to certain programs; amending s. 1007.25, F.S.; creating

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
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The Committee on Fiscal Policy (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 963 - 1063

and insert:

College, Polk State College, and Tallahassee Community College are authorized to charge an amount not to exceed $290 per credit hour for nonresident tuition and fees for distance learning. Such institutions may phase in this nonresident tuition rate by degree program.

Section 19. Paragraphs (a) through (f) of subsection (10)

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of section 1009.98, Florida Statutes, are amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2)(d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2)(b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2)(b)3. ~~The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at $37.03 per credit hour. The base rate for the tuition differential in subsequent years is the amount assessed for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.~~

(b) Effective with the 2022-2023 ~~2009-2010~~ academic year and thereafter, and notwithstanding s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose contract was purchased before July 1, 2034 ~~2024~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding

fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.

2. As to the tuition differential, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed ~~base rate~~ for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed ~~base rate~~ for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed ~~base rate~~ for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed ~~base~~

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~~rate~~ for the tuition differential fee in the preceding fiscal year.

3. As to local fees, the board shall pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.

4. As to dormitory fees, the board shall pay the state universities 6 percent above the amount assessed for dormitory fees in the preceding fiscal year.

5. Qualified beneficiaries of advance payment contracts purchased before July 1, 2007, are exempt from paying any tuition differential fee.

(c) Notwithstanding the amount assessed for registration fees, the tuition differential, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2034 ~~July 1, 2024~~, may not exceed 100 percent of the amount charged by the state university for the aggregate sum of those fees.

(d) Notwithstanding the amount assessed for dormitory fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2034 ~~July 1, 2024~~, may not exceed 100 percent of the amount charged by the state university for dormitory fees.

(e) Notwithstanding the number of credit hours used by a state university to assess the amount for registration fees, tuition, tuition differential, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July

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1, 2034 ~~July 1, 2024~~, may not exceed the number of credit hours taken by that qualified beneficiary at the state university.

(f) The board shall pay state universities the actual amount assessed in accordance with law for registration fees, the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2034 ~~July 1, 2024~~.

Section 20. Subsection (5) is added to section 1012.55, Florida Statutes, to read:

1012.55 Positions for which certificates required.—

(5) Notwithstanding ss. 1012.32, 1012.55, and 1012.56, or any other provision of law or rule to the contrary, the State Board of Education shall adopt rules to allow for the issuance of a classical education teaching certificate, upon the request of a classical school, to any applicant who fulfills the requirements of s. 1012.56(2)(a)-(f) and (11) and any other criteria established by the department. Such certificate is only valid at a classical school. For the purposes of this subsection, the term "classical school" means a school that implements and provides professional learning in a classical education school model that emphasizes the development of students in the principles of moral character and civic virtue through a well-rounded education in the liberal arts and sciences that is based on the classical trivium stages of grammar, logic, and rhetoric.

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

And the title is amended as follows:

Delete lines 84 - 91

396512

and insert:

authorizing certain Florida College System institutions to charge a specified amount for nonresident tuition and fees for distance learning; amending s. 1009.98, F.S.; revising the definition of the term "tuition differential"; revising provisions relating to payments the Florida Prepaid College Board must pay to state universities on behalf of beneficiaries of specified contracts; amending s. 1012.55, F.S.; requiring the state board to adopt rules for the issuance of a classical education teaching certificate; providing requirements for such certificate; defining the term "classical school"; amending s. 1012.79, F.S.;

By the Appropriations Committee on Education; the Committee on Education Pre-K -12; and Senator Burgess

602-03146-24 2024996c2

A bill to be entitled

An act relating to education; amending ss. 192.0105, 192.048, and 196.082, F.S.; conforming cross-references; amending s. 196.011, F.S.; providing that an annual application for exemption on property used to house a charter school is not required; requiring the owner or lessee of such property to notify the property appraiser in specified circumstances; providing penalties; amending s. 1002.33, F.S.; providing that students who transfer from certain classical schools to certain charter classical schools may be included as a student population to whom charter schools may give enrollment preference; defining the term "classical school"; revising the definition of the term "charter school personnel"; amending s. 1002.42, F.S.; authorizing private schools to use or purchase specified facilities; exempting such facilities from specified zoning or land use requirements; requiring that such facilities meet specified laws, codes, and rules; amending s. 1002.45, F.S.; providing responsibilities for approved virtual instruction program providers, virtual charter schools, and school districts relating to statewide assessments and progress monitoring for certain students; creating s. 1003.052, F.S.; establishing the Purple Star School District Program; providing requirements for such program; authorizing the Department of Education to establish additional program criteria; authorizing the State Board of

602-03146-24 2024996c2

Education to adopt rules; amending s. 1003.451, F.S.; requiring school districts and charter schools to provide certain students with an opportunity to take the Armed Services Vocational Aptitude Battery and consult with a military recruiter; providing requirements for the scheduling of such test; amending s. 1003.53, F.S.; revising requirements for the assignment of students to disciplinary programs and alternative school settings or other programs; revising requirements for dropout prevention and academic intervention programs; requiring such programs to include academic intervention plans for students; providing requirements for such plans; providing that specified provisions apply to all dropout prevention and academic intervention programs; requiring school principals or their designees to make a reasonable effort to notify parents by specified means and to document such effort; creating s. 1004.051, F.S.; prohibiting a public postsecondary institution from implicitly or explicitly prohibiting specified students from being employed; providing applicability; amending s. 1006.38, F.S.; requiring instructional materials publishers and manufacturers or their representatives to make sample copies of specified instructional materials available electronically for use by certain institutes for a specified purpose; amending s. 1007.25, F.S.; creating associate in arts specialized transfer degrees; providing requirements for such degrees; providing a

process for the approval of such degree programs; requiring the state board to adopt specified rules; amending s. 1007.271, F.S.; requiring district school boards to make reasonable efforts to enter into specified agreements with a Florida College System institution for certain online courses; amending s. 1008.33, F.S.; revising the date by which a memorandum of understanding relating to schools in turnaround status must be provided to the department; revising requirements for district-managed turnaround plans; providing requirements for turnaround schools that close and reopen as charter schools and school districts in which such schools reside; providing that specified provisions do not apply to certain turnaround schools; requiring the State Board of Education to adopt rules for a charter school turnaround contract and specified leases and agreements; amending s. 1008.34, F.S.; requiring that any changes made by the state board to components in the school grades model or the school grading scale shall go into effect, at the earliest, the following school year; amending s. 1009.21, F.S.; providing that a specified method for a student to prove residency for tuition purposes is deemed a single, conclusive piece of evidence; amending s. 1009.23, F.S.; authorizing Florida College System institutions to charge a specified amount for nonresident tuition and fees for distance learning; amending s. 1009.98, F.S.; revising the definition of the term "tuition

differential"; revising provisions relating to payments the Florida Prepaid College Board must pay to state universities on behalf of beneficiaries of specified contracts; amending s. 1012.79, F.S.; authorizing the Commissioner of Education to appoint an executive director of the Education Practices Commission; revising the purpose of the commission; authorizing the commission to expend funds for legal services; repealing s. 1012.86, F.S., relating to the Florida College System institution employment equity accountability program; amending ss. 1001.64 and 1001.65, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) and paragraphs (b) and (c) of subsection (2) of section 192.0105, Florida Statutes, are amended to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue,

and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are provided in s. 213.015. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the departmental rules include:

(1) THE RIGHT TO KNOW.—

(f) The right of an exemption recipient to be sent a renewal application for that exemption, the right to a receipt for homestead exemption claim when filed, and the right to notice of denial of the exemption (see ss. 196.011(7) ~~196.011(6)~~, 196.131(1), 196.151, and 196.193(1)(c) and (5)).

Notwithstanding the right to information contained in this subsection, under s. 197.122 property owners are held to know that property taxes are due and payable annually and are charged with a duty to ascertain the amount of current and delinquent taxes and obtain the necessary information from the applicable governmental officials.

(2) THE RIGHT TO DUE PROCESS.—

(b) The right to petition the value adjustment board over objections to assessments, denial of exemption, denial of agricultural classification, denial of historic classification, denial of high-water recharge classification, disapproval of tax deferral, and any penalties on deferred taxes imposed for incorrect information willfully filed. Payment of estimated

taxes does not preclude the right of the taxpayer to challenge his or her assessment (see ss. 194.011(3), 196.011(7) and (10)(a), 196.151, 196.193(1)(c) and (5), 193.461(2), 193.503(7), 193.625(2), 197.2425, 197.301(2), and 197.2301(11) ~~ss. 194.011(3), 196.011(6) and (9)(a), 196.151, 196.193(1)(c) and (5), 193.461(2), 193.503(7), 193.625(2), 197.2425, 197.301(2), and 197.2301(11)~~).

(c) The right to file a petition for exemption or agricultural classification with the value adjustment board when an application deadline is missed, upon demonstration of particular extenuating circumstances for filing late (see ss. 193.461(3)(a) and 196.011(1), (8), (9), and (10)(e) ~~ss. 193.461(3)(a) and 196.011(1), (7), (8), and (9)(c)~~).

Section 2. Paragraphs (b), (c), and (d) of subsection (1) of section 192.048, Florida Statutes, are amended to read:

192.048 Electronic transmission.—

(1) Subject to subsection (2), the following documents may be transmitted electronically rather than by regular mail:

(b) The tax exemption renewal application required under s. 196.011(7)(a) ~~s. 196.011(6)(a)~~.

(c) The tax exemption renewal application required under s. 196.011(7)(b) ~~s. 196.011(6)(b)~~.

(d) A notification of an intent to deny a tax exemption required under s. 196.011(10)(e) ~~s. 196.011(9)(c)~~.

Section 3. Subsections (3) and (4) of section 196.082, Florida Statutes, are amended to read:

196.082 Discounts for disabled veterans; surviving spouse carryover.—

(3) If the partially or totally and permanently disabled

veteran predeceases his or her spouse and if, upon the death of the veteran, the spouse holds the legal or beneficial title to the homestead and permanently resides thereon as specified in s. 196.031, the discount from ad valorem tax that the veteran received carries over to the benefit of the veteran's spouse until such time as he or she remarries or sells or otherwise disposes of the property. If the spouse sells or otherwise disposes of the property, a discount not to exceed the dollar amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as it is used as his or her primary residence and he or she does not remarry. An applicant who is qualified to receive a discount under this section and who fails to file an application by March 1 may file an application for the discount and may file a petition pursuant to s. 194.011(3) with the value adjustment board requesting that the discount be granted. Such application and petition shall be subject to the same procedures as for exemptions set forth in s. 196.011(9) ~~s. 196.011(8)~~.

(4) To qualify for the discount granted under this section, an applicant must submit to the county property appraiser by March 1:

(a) An official letter from the United States Department of Veterans Affairs which states the percentage of the veteran's service-connected disability and evidence that reasonably identifies the disability as combat-related;

(b) A copy of the veteran's honorable discharge; and

(c) Proof of age as of January 1 of the year to which the discount will apply.

Any applicant who is qualified to receive a discount under this section and who fails to file an application by March 1 may file an application for the discount and may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the discount be granted. Such application and petition shall be subject to the same procedures as for exemptions set forth in s. 196.011(9) ~~s. 196.011(8)~~.

Section 4. Present subsections (5) through (12) of section 196.011, Florida Statutes, are redesignated as subsections (6) through (13), respectively, a new subsection (5) is added to that section, and subsection (1) and present subsections (10) and (11) of that section are amended, to read:

196.011 Annual application required for exemption.—

(1)(a) Except as provided in s. 196.081(1)(b), every person or organization who, on January 1, has the legal title to real or personal property, except inventory, which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which exemption is claimed and certifying its ownership and use. The Department of Revenue shall prescribe the forms upon which the application is made. Failure to make application, when required, on or before March 1 of any year shall constitute a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (9) ~~(8)~~.

(b) The form to apply for an exemption under s. 196.031, s. 196.081, s. 196.091, s. 196.101, s. 196.102, s. 196.173, or s. 196.202 must include a space for the applicant to list the

social security number of the applicant and of the applicant's spouse, if any. If an applicant files a timely and otherwise complete application, and omits the required social security numbers, the application is incomplete. In that event, the property appraiser shall contact the applicant, who may refile a complete application by April 1. Failure to file a complete application by that date constitutes a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (9) ~~(8)~~.

(5) It is not necessary to make annual application for exemption on property used to house a charter school pursuant to s. 196.1983. The owner or lessee of any property used to house a charter school pursuant to s. 196.1983 who is not required to file an annual application shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner or lessee changes so as to change the exempt status of the property. If any owner or lessee fails to so notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the owner or lessee was not entitled to receive such exemption, the owner or lessee of the property is subject to the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. The property appraiser making such determination shall record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property is subject to the payment of all taxes and penalties. Such lien when filed shall attach to any property, identified in the

notice of tax lien, owned by the person or entity who illegally or improperly received the exemption. If such person or entity no longer owns property in that county but owns property in some other county or counties in the state, the property appraiser shall record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity in such county or counties, and it shall become a lien against such property in such county or counties.

(11) ~~(10)~~ At the option of the property appraiser and notwithstanding any other provision of this section, initial or original applications for homestead exemption for the succeeding year may be accepted and granted after March 1. Reapplication on a short form as authorized by subsection (6) ~~(5)~~ shall be required if the county has not waived the requirement of an annual application. Once the initial or original application and reapplication have been granted, the property may qualify for the exemption in each succeeding year pursuant to the provisions of subsection (7) ~~(6)~~ or subsection (10) ~~(9)~~.

(12) ~~(11)~~ For exemptions enumerated in paragraph (1)(b), social security numbers of the applicant and the applicant's spouse, if any, are required and must be submitted to the department. Applications filed pursuant to subsection (6) ~~(5)~~ or subsection (7) ~~(6)~~ shall include social security numbers of the applicant and the applicant's spouse, if any. For counties where the annual application requirement has been waived, property appraisers may require refiling of an application to obtain such information.

Section 5. Paragraph (d) of subsection (10) and paragraph (a) of subsection (24) of section 1002.33, Florida Statutes, are

amended to read:

1002.33 Charter schools.—

(10) ELIGIBLE STUDENTS.—

(d) A charter school may give enrollment preference to the following student populations:

1. Students who are siblings of a student enrolled in the charter school.

2. Students who are the children of a member of the governing board of the charter school.

3. Students who are the children of an employee of the charter school.

4. Students who are the children of:

a. An employee of the business partner of a charter school-in-the-workplace established under paragraph (15)(b) or a resident of the municipality in which such charter school is located; or

b. A resident or employee of a municipality that operates a charter school-in-a-municipality pursuant to paragraph (15)(c) or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.

5. Students who have successfully completed, during the previous year, a voluntary prekindergarten education program under ss. 1002.51-1002.79 provided by the charter school, the charter school's governing board, or a voluntary prekindergarten provider that has a written agreement with the governing board.

6. Students who are the children of an active duty member of any branch of the United States Armed Forces.

7. Students who attended or are assigned to failing schools

pursuant to s. 1002.38(2).

8. Students who are the children of a safe-school officer, as defined in s. 1006.12, at the school.

9. Students who transfer from a classical school in this state to a charter classical school in this state. For purposes of this subparagraph, the term "classical school" means a traditional public school or charter school that implements a classical education model that emphasizes the development of students in the principles of moral character and civic virtue through a well-rounded education in the liberal arts and sciences which is based on the classical trivium stages of grammar, logic, and rhetoric.

(24) RESTRICTION ON EMPLOYMENT OF RELATIVES.—

(a) This subsection applies to charter school personnel in a charter school operated by a private entity. As used in this subsection, the term:

1. "Charter school personnel" means a ~~charter school owner,~~ president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority and in whom is vested the authority, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in a charter school, including the authority as a member of a governing body of a charter school to vote on the appointment, employment, promotion, or advancement of individuals.

2. "Relative" means father, mother, son, daughter, brother,

sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

Charter school personnel in schools operated by a municipality or other public entity are subject to s. 112.3135.

Section 6. Subsection (19) is added to s. 1002.42, Florida Statutes, to read:

1002.42 Private schools.—

(19) FACILITIES.—

(a) A private school may use facilities on property owned or leased by a library, community service organization, museum, performing arts venue, theatre, cinema, or church facility under s. 170.201, which is or was actively used as such within 5 years of any executed agreement with a private school to use the facilities; any facility or land owned by a Florida College System institution or university; any similar public institutional facilities; and any facility recently used to house a school or child care facility licensed under s. 402.305, under any such facility's preexisting zoning and land use designations without rezoning or obtaining a special exception or a land use change, and without complying with any mitigation requirements or conditions. The facility must meet applicable state and local health, safety, and welfare laws, codes, and rules, including firesafety and building safety.

(b) A private school may use facilities on property purchased from a library, community service organization,

museum, performing arts venue, theatre, cinema, or church facility under s. 170.201, which is actively or was actively used as such within 5 years of any executed agreement with a private school to purchase the facilities; any facility or land owned by a Florida College System institution or university; any similar public institutional facilities; and any facility recently used to house a school or child care facility licensed under s. 402.305, under any such facility's preexisting zoning and land use designations without obtaining a special exception, rezoning, or a land use change, and without complying with any mitigation requirements or conditions. The facility must meet applicable state and local health, safety, and welfare laws, codes, and rules, including firesafety and building safety.

Section 7. Paragraph (b) of subsection (5) of section 1002.45, Florida Statutes, is amended to read:

1002.45 Virtual instruction programs.—

(5) STUDENT PARTICIPATION REQUIREMENTS.—Each student enrolled in the school district's virtual instruction program authorized pursuant to paragraph (1)(c) must:

(b) Take statewide assessments pursuant to s. 1008.22 and participate in the coordinated screening and progress monitoring system under s. 1008.25(9). Statewide assessments and progress monitoring may be administered within the school district in which such student resides~~,~~ or as specified in the contract under ~~in accordance with~~ s. 1008.24(3). If requested by the approved virtual instruction program provider or virtual charter school, the district of residence must provide the student with access to the district's testing facilities. It is the responsibility of the approved virtual instruction program

provider or virtual charter school to provide a list of students to be administered statewide assessments and progress monitoring to the school district, including the students' names, Florida Education Identifiers, grade levels, assessments and progress monitoring to be administered, and contact information. Unless an alternative testing site is mutually agreed to by the approved virtual instruction program provider or virtual charter school and the school district, or as specified in the contract under s. 1008.24, all assessments and progress monitoring must be taken at the school to which the student would be assigned according to district school board attendance policies. A school district must provide the student with access to the school's or district's testing facilities and provide the student with the date and time of the administration of each assessment and progress monitoring.

Section 8. Section 1003.052, Florida Statutes, is created to read:

1003.052 The Purple Star School District Program.—

(1)(a) The Department of Education shall establish the Purple Star School District Program. At a minimum, the program must require a participating school district to:

1. Have at least 75 percent of the schools within the district be designated as Purple Star Campuses under s. 1003.051.

2. Maintain a web page on the district's website which includes resources for military students and their families and a link to each Purple Star Campus's web page that meets the requirements of s. 1003.051(2)(a)2.

(b) The department may establish additional program

criteria to identify school districts that demonstrate a commitment to or provide critical coordination of services for military students and their families, including, but not limited to, establishing a council consisting of a representative from each Purple Star Campus in the district and one district-level representative to ensure the alignment of military student-focused policies and procedures within the district.

(2) The State Board of Education may adopt rules to administer this section.

Section 9. Present subsection (4) of section 1003.451, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

1003.451 Junior Reserve Officers' Training Corps; military recruiters; access to public school campuses; Armed Services Vocational Aptitude Battery (ASVAB).—

(4) Each school district and charter school shall provide students in grades 11 and 12 an opportunity to take the Armed Services Vocational Aptitude Battery (ASVAB) and consult with a military recruiter if the student selects. To optimize student participation, the ASVAB must be scheduled during normal school hours.

Section 10. Paragraphs (a) and (c) of subsection (1), paragraph (a) of subsection (2), and subsections (3) through (7) of section 1003.53, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

1003.53 Dropout prevention and academic intervention.—

(1)(a) Dropout prevention and academic intervention programs may differ from traditional educational programs and schools in scheduling, administrative structure, philosophy,

curriculum, or setting and shall employ alternative teaching methodologies, curricula, learning activities, and diagnostic and assessment procedures in order to meet the needs, interests, abilities, and talents of eligible students. The educational program shall provide curricula, character development and law education, and related services that support the program goals and lead to improved performance in the areas of academic achievement, attendance, and discipline. Student participation in such programs shall be voluntary. District school boards may, however, assign students to a disciplinary program for disruptive students or an alternative school setting or other program pursuant to s. 1006.13. Notwithstanding any other provision of law to the contrary, no student shall be identified as being eligible to receive services ~~funded~~ through the dropout prevention and academic intervention program based solely on the student being from a single-parent family or having a disability.

(c) A student shall be identified as being eligible to receive services ~~funded~~ through the dropout prevention and academic intervention program based upon one of the following criteria:

1. The student is academically unsuccessful as evidenced by low test scores, retention, failing grades, low grade point average, falling behind in earning credits, or not meeting the state or district achievement levels in reading, mathematics, or writing.

2. The student has a pattern of excessive absenteeism or has been identified as a habitual truant.

3. The student has a history of disruptive behavior in

school or has committed an offense that warrants out-of-school suspension or expulsion from school according to the district school board's code of student conduct. For the purposes of this program, "disruptive behavior" is behavior that:

a. Interferes with the student's own learning or the educational process of others and requires attention and assistance beyond that which the traditional program can provide or results in frequent conflicts of a disruptive nature while the student is under the jurisdiction of the school either in or out of the classroom; or

b. Severely threatens the general welfare of students or others with whom the student comes into contact.

4. The student is identified by a school's early warning system pursuant to s. 1001.42(18)(b).

(2)(a) Each district school board may establish dropout prevention and academic intervention programs at the elementary, middle, junior high school, or high school level. Programs designed to eliminate patterns of excessive absenteeism or habitual truancy shall emphasize academic performance and may provide specific instruction in the areas of career education, preemployment training, and behavioral management. Such programs shall utilize instructional teaching methods and student services that lead to improved student behavior as appropriate to the specific needs of the student.

(c) For each student enrolled in a dropout prevention and academic intervention program, an academic intervention plan shall be developed to address eligibility for placement in the program and to provide individualized student goals and progress monitoring procedures. A student's academic intervention plan

must be consistent with the student's individual education plan (IEP).

(3) Each district school board providing ~~receiving state funding for~~ dropout prevention and academic intervention programs ~~through the General Appropriations Act~~ shall submit information through an annual report to the Department of Education's database documenting the extent to which each of the district's dropout prevention and academic intervention programs has been successful in the areas of graduation rate, dropout rate, attendance rate, and retention/promotion rate. The department shall compile this information into an annual report which shall be submitted to the presiding officers of the Legislature by February 15.

(4) Each district school board shall establish course standards, as defined by rule of the State Board of Education, for dropout prevention and academic intervention programs and procedures for ensuring that teachers assigned to the programs are certified pursuant to s. 1012.55 and possess the affective, pedagogical, and content-related skills necessary to meet the needs of these students.

(5) Each district school board providing a dropout prevention and academic intervention program pursuant to this section shall maintain for each participating student records documenting the student's eligibility, the length of participation, the type of program to which the student was assigned or the type of academic intervention services provided, and an evaluation of the student's academic and behavioral performance while in the program. The school principal or his or her designee shall, prior to placement in a dropout prevention

and academic intervention program or the provision of an academic service, provide written notice of placement or services by certified mail, return receipt requested, to the student's parent. The parent of the student shall sign an acknowledgment of the notice of placement or service and return the signed acknowledgment to the principal within 3 days after receipt of the notice. District school boards may adopt a policy that allows a parent to agree to an alternative method of notification. Such agreement may be made before the need for notification arises or at the time the notification becomes required. The parents of a student assigned to such a dropout prevention and academic intervention program shall be notified in writing and entitled to an administrative review of any action by school personnel relating to such placement pursuant to ~~the provisions of~~ chapter 120.

(6) District school board dropout prevention and academic intervention programs shall be coordinated with social service, law enforcement, prosecutorial, and juvenile justice agencies and juvenile assessment centers in the school district. Notwithstanding ~~the provisions of~~ s. 1002.22, these agencies are authorized to exchange information contained in student records and juvenile justice records. Such information is confidential and exempt from ~~the provisions of~~ s. 119.07(1). District school boards and other agencies receiving such information shall use the information only for official purposes connected with the certification of students for admission to and for the administration of the dropout prevention and academic intervention program, and shall maintain the confidentiality of such information unless otherwise provided by law or rule.

(7) The State Board of Educationshall have the authority pursuant to ss. 120.536(1) and 120.54 to adopt rules necessary to implement ~~the provisions of~~ this section; such rules shall require the minimum amount of necessary paperwork and reporting.

Section 11. Section 1004.051, Florida Statutes, is created to read:

1004.051 Regulation of working students.—

(1) A public postsecondary institution may not, as a condition of admission to or enrollment in any of the institution's schools, colleges, or programs, implicitly or explicitly prohibit an applicant or currently enrolled student from being employed, either full time or part time.

(2) This section does not apply if the applicant or currently enrolled student is employed by an organization or agency that is affiliated or associated with a foreign country of concern as defined in s. 288.860(1).

Section 12. Present subsections (3) through (16) of section 1006.38, Florida Statutes, are redesignated as subsections (4) through (17), respectively, a new subsection (3) is added to that section, and present subsections (14) and (16) of that section are amended, to read:

1006.38 Duties, responsibilities, and requirements of instructional materials publishers and manufacturers.—This section applies to both the state and district approval processes. Publishers and manufacturers of instructional materials, or their representatives, shall:

(3) For each adoption cycle, make sample copies of all instructional materials on the commissioner's list of state-adopted instructional materials available electronically for use

by educator preparation institutes as defined in s. 1004.85(1) to enable educators to practice teaching with currently adopted instructional materials aligned to state academic standards.

(15)~~(14)~~ Accurately and fully disclose only the names of those persons who actually authored the instructional materials. In addition to the penalties provided in subsection (17) ~~(16)~~, the commissioner may remove from the list of state-adopted instructional materials those instructional materials whose publisher or manufacturer misleads the purchaser by falsely representing genuine authorship.

(17)~~(16)~~ Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the department in the amount of three times the total sum which the publisher or manufacturer was paid in excess of the price required under subsections ~~(5) and~~ (6) and (7) and in the amount of three times the total value of the instructional materials and services which the district school board is entitled to receive free of charge under subsection (8) ~~(7)~~.

Section 13. Subsections (9) and (12) of section 1007.25, Florida Statutes, are amended to read:

1007.25 General education courses; common prerequisites; other degree requirements.—

(9)(a) An associate in arts degree must ~~shall~~ require no more than 60 semester hours of college credit and include 36 semester hours of general education coursework. Beginning with students initially entering a Florida College System institution or state university in the 2014-2015 academic year and thereafter, coursework for an associate in arts degree must ~~shall~~ include demonstration of competency in a foreign language

pursuant to s. 1007.262. Except for developmental education required pursuant to s. 1008.30, all required coursework must ~~shall~~ count toward the associate in arts degree or the baccalaureate degree.

(b) An associate in arts specialized transfer degree must include 36 semester hours of general education coursework and require 60 semester hours or more of college credit. Specialized transfer degrees are designed for Florida College System institution students who need supplemental lower-level coursework in preparation for transfer to another institution. The State Board of Education shall establish criteria for the review and approval of new specialized transfer degrees. The approval process must require:

1. A Florida College System institution to submit a notice of its intent to propose a new associate in arts specialized degree program to the Division of Florida Colleges. The notice must include the recommended credit hours, the rationale for the specialization, the demand for students entering the field, and the coursework being proposed to be included beyond the 60 semester hours required for the general transfer degree, if applicable. Notices of intent may be submitted by a Florida College System institution at any time.

2. The Division of Florida Colleges to forward the notice of intent within 10 business days after receipt to all Florida College System institutions and to the Chancellor of the State University System, who shall forward the notice to all state universities. State universities and Florida College System institutions shall have 60 days after receipt of the notice to submit comments to the proposed associate in arts specialized

transfer degree.

3. After the submission of comments pursuant to subparagraph 2., the requesting Florida College System institution to submit a proposal that, at a minimum, includes:

a. Evidence that the coursework for the associate in arts specialized transfer degree includes demonstration of competency in a foreign language pursuant to s. 1007.262 and demonstration of civic literacy competency as provided in subsection (5).

b. Demonstration that all required coursework will count toward the associate in arts degree or the baccalaureate degree.

c. An analysis of demand and unmet need for students entering the specialized field of study at the baccalaureate level.

d. Justification for the program length if it exceeds 60 credit hours, including references to the common prerequisite manual or other requirements for the baccalaureate degree. This includes documentation of alignment between the exit requirements of a Florida College System institution and the admissions requirements of a baccalaureate program at a state university to which students would typically transfer.

e. Articulation agreements for graduates of the associate in arts specialized transfer degree.

f. Responses to the comments received under subparagraph 2.

(c) The Division of Florida Colleges shall review the proposal and, within 30 days after receipt, shall provide written notification to the Florida College System institution of any deficiencies and provide the institution with an opportunity to correct the deficiencies. Within 45 days after receipt of a completed proposal by the Division of Florida

Colleges, the Commissioner of Education shall recommend approval or disapproval of the new specialized transfer degree to the State Board of Education. The State Board of Education shall consider the recommendation at its next meeting.

(d) Upon approval of an associate in arts specialized transfer degree by the State Board of Education, a Florida College System institution may offer the degree and shall report data on student and program performance in a manner prescribed by the Department of Education.

(e) The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to prescribe format and content requirements and submission procedures for notices of intent, proposals, and compliance reviews under this subsection.

(12) A student who received an associate in arts degree ~~for successfully completing 60 semester credit hours~~ may continue to earn additional credits at a Florida College System institution. The university must provide credit toward the student's baccalaureate degree for an additional Florida College System institution course if, according to the statewide course numbering, the Florida College System institution course is a course listed in the university catalog as required for the degree or as prerequisite to a course required for the degree. Of the courses required for the degree, at least half of the credit hours required for the degree must ~~shall~~ be achievable through courses designated as lower division, except in degree programs approved by the State Board of Education for programs offered by Florida College System institutions and by the Board of Governors for programs offered by state universities.

Section 14. Subsection (4) of section 1007.271, Florida

Statutes, is amended to read:

1007.271 Dual enrollment programs.—

(4)(a) District school boards may not refuse to enter into a dual enrollment articulation agreement with a local Florida College System institution if that Florida College System institution has the capacity to offer dual enrollment courses.

(b) District school boards must make reasonable efforts to enter into dual enrollment articulation agreements with a Florida College System institution that offers online dual enrollment courses.

Section 15. Subsections (4) and (5) of section 1008.33, Florida Statutes, are amended to read:

1008.33 Authority to enforce public school improvement.—

(4)(a) The state board shall apply intensive intervention and support strategies tailored to the needs of schools earning two consecutive grades of "D" or a grade of "F." In the first full school year after a school initially earns a grade of "D," the school district must immediately implement intervention and support strategies prescribed in rule under paragraph (3)(c). For a school that initially earns a grade of "F" or a second consecutive grade of "D," the school district must either continue implementing or immediately begin implementing intervention and support strategies prescribed in rule under paragraph (3)(c) and for the 2024-2025 school year provide the department, by September 1, with the memorandum of understanding negotiated pursuant to s. 1001.42(21) and, by October 1, a district-managed turnaround plan for approval by the state board. For the 2025-2026 school year and thereafter, the school district must provide the department, by August 1, with the

memorandum of understanding negotiated pursuant to s. 1001.42(21) and a district-managed turnaround plan for approval by the state board. The plan must include measurable academic benchmarks that put the school on a path to earning and maintaining a grade of "C" or higher ~~The district-managed turnaround plan may include a proposal for the district to implement an extended school day, a summer program, a combination of an extended school day and a summer program, or any other option authorized under paragraph (b) for state board approval. A school district is not required to wait until a school earns a second consecutive grade of "D" to submit a turnaround plan for approval by the state board under this paragraph~~. Upon approval by the state board, the school district must implement the plan for the remainder of the school year and continue the plan for 1 full school year. The state board may allow a school an additional year of implementation before the school must implement a turnaround option required under paragraph (b) if it determines that the school is likely to improve to a grade of "C" or higher after the first full school year of implementation.

(b) Unless an additional year of implementation is provided pursuant to paragraph (a), a school that completes a plan cycle under paragraph (a) and does not improve to a grade of "C" or higher must ~~implement one of the following~~:

1. Reassign students to another school and monitor the progress of each reassigned student;

2. Close the school and reopen the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness. Upon reopening as a

charter school:

a. The school district shall continue to operate the school for the following school year and, no later than October 1, execute a charter school turnaround contract that will allow the charter school an opportunity to conduct an evaluation of the educational program and personnel currently assigned to the school during the year in preparation for assuming full operational control of the school and facility by July 1. The school district may not reduce or remove resources from the school during this time.

b. The charter school operator must provide enrollment preference to students currently attending or who would have otherwise attended or been zoned for the school. The school district shall consult and negotiate with the charter school every 3 years to determine whether realignment of the attendance zone is appropriate to ensure that students residing closest to the school are provided with an enrollment preference.

c. The charter school operator must serve the existing grade levels served by the school at its current enrollment or higher, but may, at its discretion, serve additional grade levels.

d. The school district may not charge rental or leasing fees for the existing facility or for the property normally inventoried to the school. The school and the school district shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to all other school facilities in the school district.

e. The school district may not withhold an administrative fee for the provision of services identified in s.

1002.33(20)(a); or

3. Contract with an outside entity that has a demonstrated record of effectiveness to provide turnaround services identified in state board rule, which may include school leadership, educational modalities, teacher and leadership professional development, curriculum, operation and management services, school-based administrative staffing, budgeting, scheduling, other educational service provider functions, or any combination thereof. Selection of an outside entity may include one or a combination of the following:

a. An external operator, which may be a district-managed charter school or a high-performing charter school network in which all instructional personnel are not employees of the school district, but are employees of an independent governing board composed of members who did not participate in the review or approval of the charter.

b. A contractual agreement that allows for a charter school network or any of its affiliated subsidiaries to provide individualized consultancy services tailored to address the identified needs of one or more schools under this section.

A school district and outside entity under this subparagraph must enter, at minimum, a 2-year, performance-based contract. The contract must include school performance and growth metrics the outside entity must meet on an annual basis. The state board may require the school district to modify or cancel the contract.

(c) Implementation of the turnaround option is no longer required if the school improves to a grade of "C" or higher,

unless the school district has already executed a charter school turnaround contract pursuant to this section.

(d) If a school earning two consecutive grades of "D" or a grade of "F" does not improve to a grade of "C" or higher after 2 school years of implementing the turnaround option selected by the school district under paragraph (b), the school district must implement another turnaround option. Implementation of the turnaround option must begin the school year following the implementation period of the existing turnaround option, unless the state board determines that the school is likely to improve to a grade of "C" or higher if additional time is provided to implement the existing turnaround option.

(5) The state board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section. The rules shall include timelines for submission of implementation plans, approval criteria for implementation plans, ~~and~~ timelines for implementing intervention and support strategies, a standard charter school turnaround contract, a standard facility lease, and a mutual management agreement. The state board shall consult with education stakeholders in developing the rules.

Section 16. Paragraph (c) of subsection (3) of section 1008.34, Florida Statutes, are amended to read:

1008.34 School grading system; school report cards; district grade.—

(3) DESIGNATION OF SCHOOL GRADES.—

(c)1. The calculation of a school grade shall be based on the percentage of points earned from the components listed in subparagraph (b)1. and, if applicable, subparagraph (b)2. The State Board of Education shall adopt in rule a school grading

scale that sets the percentage of points needed to earn each of the school grades listed in subsection (2). There shall be at least five percentage points separating the percentage thresholds needed to earn each of the school grades. The state board shall annually review the percentage of school grades of "A" and "B" for the school year to determine whether to adjust the school grading scale upward for the following school year's school grades. The first adjustment would occur no earlier than the 2023-2024 school year. An adjustment must be made if the percentage of schools earning a grade of "A" or "B" in the current year represents 75 percent or more of all graded schools within a particular school type, which consists of elementary, middle, high, and combination. The adjustment must reset the minimum required percentage of points for each grade of "A," "B," "C," or "D" at the next highest percentage ending in the numeral 5 or 0, whichever is closest to the current percentage. Annual reviews of the percentage of schools earning a grade of "A" or "B" and adjustments to the required points must be suspended when the following grading scale for a specific school type is achieved:

a. Ninety percent or more of the points for a grade of "A."

b. Eighty to eighty-nine percent of the points for a grade of "B."

c. Seventy to seventy-nine percent of the points for a grade of "C."

d. Sixty to sixty-nine percent of the points for a grade of "D."

When the state board adjusts the grading scale upward, the state

board must inform the public of the degree of the adjustment and its anticipated impact on school grades. Beginning in the 2024-2025 school year, any changes made by the state board to components in the school grades model or to the school grading scale shall go into effect, at the earliest, in the following school year.

2. The calculation of school grades may not include any provision that would raise or lower the school's grade beyond the percentage of points earned. Extra weight may not be added in the calculation of any components.

Section 17. Paragraph (c) of subsection (3) of section 1009.21, Florida Statutes, is amended to read:

1009.21 Determination of resident status for tuition purposes.—Students shall be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers or career centers operated by school districts, in Florida College System institutions, and in state universities.

(3)

(c) Each institution of higher education shall affirmatively determine that an applicant who has been granted admission to that institution as a Florida resident meets the residency requirements of this section at the time of initial enrollment. The residency determination must be documented by the submission of written or electronic verification that includes two or more of the documents identified in this paragraph, unless the document provided is the document described in sub-subparagraph 1.f., which is deemed a single,

conclusive piece of evidence proving residency. ~~No single piece of evidence shall be conclusive.~~

1. The documents must include at least one of the following:

a. A Florida voter's registration card.

b. A Florida driver license.

c. A State of Florida identification card.

d. A Florida vehicle registration.

e. Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child.

f. Proof of a homestead exemption in Florida.

g. Transcripts from a Florida high school for multiple years if the Florida high school diploma or high school equivalency diploma was earned within the last 12 months.

h. Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.

2. The documents may include one or more of the following:

a. A declaration of domicile in Florida.

b. A Florida professional or occupational license.

c. Florida incorporation.

d. A document evidencing family ties in Florida.

e. Proof of membership in a Florida-based charitable or professional organization.

f. Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official state, federal, or court document evidencing

legal ties to Florida.

Section 18. Subsection (22) is added to section 1009.23, Florida Statutes, to read:

1009.23 Florida College System institution student fees.—

(22) Beginning with the 2024-2025 academic year, Miami Dade College, Polk State College, Tallahassee Community College, and any other Florida College System institution pursuant to s. 1000.21(5) are authorized to charge an amount not to exceed $290 per credit hour for nonresident tuition and fees for distance learning. A Florida College System institution may phase in this nonresident tuition rate by degree program.

Section 19. Paragraphs (a) through (f) of subsection (10) of section 1009.98, Florida Statutes, are amended to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(10) PAYMENTS ON BEHALF OF QUALIFIED BENEFICIARIES.—

(a) As used in this subsection, the term:

1. "Actuarial reserve" means the amount by which the expected value of the assets exceeds the expected value of the liabilities of the trust fund.

2. "Dormitory fees" means the fees included under advance payment contracts pursuant to paragraph (2)(d).

3. "Fiscal year" means the fiscal year of the state pursuant to s. 215.01.

4. "Local fees" means the fees covered by an advance payment contract provided pursuant to subparagraph (2)(b)2.

5. "Tuition differential" means the fee covered by advance payment contracts sold pursuant to subparagraph (2)(b)3. ~~The base rate for the tuition differential fee for the 2012-2013 fiscal year is established at $37.03 per credit hour. The base~~

~~rate for the tuition differential in subsequent years is the amount assessed for the tuition differential for the preceding year adjusted pursuant to subparagraph (b)2.~~

(b) Effective with the 2022-2023 ~~2009-2010~~ academic year and thereafter, and notwithstanding s. 1009.24, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract whose contract was purchased before July 1, 2034 ~~2024~~, shall be:

1. As to registration fees, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed for registration fees in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed for registration fees in the preceding fiscal year, whichever is greater.

2. As to the tuition differential, if the actuarial reserve is less than 5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 5.5 percent above the amount assessed ~~base rate~~ for the tuition differential

fee in the preceding fiscal year. If the actuarial reserve is between 5 percent and 6 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6 percent above the amount assessed ~~base rate~~ for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is between 6 percent and 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 6.5 percent above the amount assessed ~~base rate~~ for the tuition differential fee in the preceding fiscal year. If the actuarial reserve is equal to or greater than 7.5 percent of the expected liabilities of the trust fund, the board shall pay the state universities 7 percent above the amount assessed ~~base rate~~ for the tuition differential fee in the preceding fiscal year.

3. As to local fees, the board shall pay the state universities 5 percent above the amount assessed for local fees in the preceding fiscal year.

4. As to dormitory fees, the board shall pay the state universities 6 percent above the amount assessed for dormitory fees in the preceding fiscal year.

5. Qualified beneficiaries of advance payment contracts purchased before July 1, 2007, are exempt from paying any tuition differential fee.

(c) Notwithstanding the amount assessed for registration fees, the tuition differential, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2034 ~~July 1, 2024~~, may not exceed 100 percent of the amount charged by the state university for the aggregate sum of those

fees.

(d) Notwithstanding the amount assessed for dormitory fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2034 ~~July 1, 2024~~, may not exceed 100 percent of the amount charged by the state university for dormitory fees.

(e) Notwithstanding the number of credit hours used by a state university to assess the amount for registration fees, tuition, tuition differential, or local fees, the amount paid by the board to any state university on behalf of a qualified beneficiary of an advance payment contract purchased before July 1, 2034 ~~July 1, 2024~~, may not exceed the number of credit hours taken by that qualified beneficiary at the state university.

(f) The board shall pay state universities the actual amount assessed in accordance with law for registration fees, the tuition differential, local fees, and dormitory fees for advance payment contracts purchased on or after July 1, 2034 ~~July 1, 2024~~.

Section 20. Subsection (5), paragraph (a) of subsection (6), and subsection (9) of section 1012.79, Florida Statutes, are amended to read:

1012.79 Education Practices Commission; organization.—

(5) The Commissioner of Education may, at his or her discretion, appoint and remove ~~commission, by a vote of three-fourths of the membership, shall employ~~ an executive director, who shall be exempt from career service. ~~The executive director may be dismissed by a majority vote of the membership.~~

(6)(a) The commission shall be assigned to the Department

of Education for administrative and fiscal accountability purposes. The commission, in the performance of its powers and duties, may ~~shall~~ not be subject to control, supervision, or direction by the Department of Education.

(9) The commission shall make such expenditures as may be necessary in exercising its authority and powers and carrying out its duties and responsibilities, including expenditures for personal services, legal services ~~general counsel or access to counsel~~, and rent at the seat of government and elsewhere; for books of reference, periodicals, furniture, equipment, and supplies; and for printing and binding. The expenditures of the commission shall be subject to the powers and duties of the Department of Financial Services as provided in s. 17.03.

Section 21. Section 1012.86, Florida Statutes, is repealed.

Section 22. Subsection (19) of section 1001.64, Florida Statutes, is amended to read:

1001.64 Florida College System institution boards of trustees; powers and duties.—

(19) Each board of trustees shall appoint, suspend, or remove the president of the Florida College System institution. The board of trustees may appoint a search committee. The board of trustees shall conduct annual evaluations of the president in accordance with rules of the State Board of Education and submit such evaluations to the State Board of Education for review. The evaluation must address the achievement of the performance goals established by the accountability process implemented pursuant to s. 1008.45 and the performance of the president in achieving the annual and long-term goals and objectives ~~established in the Florida College System institution's employment accountability~~

~~program implemented pursuant to s. 1012.86~~.

Section 23. Subsection (22) of section 1001.65, Florida Statutes, is amended to read:

1001.65 Florida College System institution presidents; powers and duties.—The president is the chief executive officer of the Florida College System institution, shall be corporate secretary of the Florida College System institution board of trustees, and is responsible for the operation and administration of the Florida College System institution. Each Florida College System institution president shall:

~~(22) Submit an annual employment accountability plan to the Department of Education pursuant to the provisions of s. 1012.86.~~

Section 24. This act shall take effect July 1, 2024.

The Florida Senate

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2.15.24
Meeting Date

Fiscal Policy
Committee

996
Bill Number or Topic

119110
Amendment Barcode (if applicable)

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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:

Spark Learning

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/15/24
Meeting Date

Fiscal Policy
Committee

996
Bill Number or Topic

119110
Amendment Barcode (if applicable)

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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: Academica

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2-15-2024
Meeting Date

Committee

SB 996
Bill Number or Topic

119116
Amendment Barcode (if applicable)

Name Alexis Laroe Phone

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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: Step UP For Students

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/24
Meeting Date

Fiscal Policy
Committee

996
Bill Number or Topic

396512
Amendment Barcode (if applicable)

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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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S-001 (08/10/2021)

The Florida Senate

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2-15-24
Meeting Date

Fiscal Policy
Committee

996
Bill Number or Topic

396152
Amendment Barcode (if applicable)

Name Karen Mazzola

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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:
Florida PTA

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/15/2024
Meeting Date

SB 996
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Valerie Chuchman

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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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/15/24
Meeting Date

SB 996
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

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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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2-15-24
Meeting Date

Fiscal Policy
Committee

SB 996
Bill Number or Topic

Amendment Barcode (if applicable)

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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: Fdn for Florida's Future

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2-15-24
Meeting Date

Fiscal Policy
Committee

996
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Mazzola

Phone 407 855 7604

Address 1747 Orlando Central Pkwy
Street

Email legislation@floridapta.org

Orlando FL 32809
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:
Florida PTA

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. 2020-2022JointRules.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

2/15
Meeting Date

Fiscal Policy
Committee

SB 996
Bill Number or Topic

Amendment Barcode (if applicable)

Name Cory Dowd - FL Dept. of Education 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: FDOE

☐ 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. 2020-2022JointRules.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 the Senator or Senate Professional Staff conducting the meeting)

2-15-24
Meeting Date

SB 0996
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Heather Rodriguez-Wibbels

Job Title School Counselor

Address 2316 SW 17th PL #304
Street

Phone 239-217-2374

Cape Coral FL 33991
City *State* *Zip*

Email Wibbels84@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-15-2024
Meeting Date

SB 0996
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Lynette Rodriguez-Wibbels

Job Title Educator K-12

Address 2316 SW 17th Pl #304
Street

Phone 239-217-2375

Cape Coral FL 33991
City *State* *Zip*

Email lynrod9500@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

~~Waive Speaking:~~ ☐ In Support ~~☒ Against~~
(The Chair will read this information into the record.)

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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 Fiscal Policy

BILL:	CS/CS/SB 1140
INTRODUCER:	Fiscal Policy Committee; Regulated Industries Committee and Senator Burton
SUBJECT:	Mobile Homes
DATE:	February 19, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Oxamendi	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1140 revises provisions in ch. 723, F.S., relating to mobile homes. The bill allows park owners and homeowners in a dispute related to lot rental increases to select a mediator and initiate mediation proceedings before submitting a petition for mediation with the Division of Condominiums, Timeshares, and Mobile Homes (division). The mediator selected by the parties must be a qualified mediator selected from the list of circuit court mediators in each judicial circuit or the list maintained by the Florida Growth Management Conflict Resolution Consortium. It is not clear under current law that the homeowners and the park owner may agree on a mediator before submitting a petition for mediation with the division, as provided in the bill.

Under the bill, a civil action may not be initiated unless the dispute has been submitted to mediation pursuant to s. 723.037(5), F.S., which provides the process for mediating certain mobile home park disputes, including a dispute related to a rent increase. Current law permits a civil action after mediation of a dispute has failed to resolve a dispute, but does not explicitly bar the initiation of a civil action if the dispute is not submitted for mediation pursuant to s. 723.037(5), F.S. The bill allows homeowners, after the majority of the affected home owners have agreed in writing to file an action, to file an action in circuit court if the responding party park owner refuses or fails to participate in mediation. Current law provides that either party may file an action in circuit court if the mediation failed to provide a resolution to the dispute.

The bill provides that a mobile home owner's live-in health care aide or assistant be allowed to enter or leave the home owner's site without that person being required to pay additional rent, a fee, or any charge whatsoever. However, the mobile home owner must provide the information

required to have the background check and pay the cost of a background check for the live-in health care aide or assistant if one is necessary. The bill provides that a live-in health care aide or assistant does not have any rights of tenancy in the park. The bill requires the mobile home owner to notify the park owner or park manager of the name of the live-in health care aide or assistant. The mobile home owner is also responsible for any removal of the live-in health care aide and any costs associated with the removal of a live-in health care aide or assistant, if necessary.

The bill requires the division to adopt rules to implement and administer the provisions of the bill.

The bill takes effect July 1, 2024.

II. Present Situation:

Chapter 723, F.S., the "Florida Mobile Home Act" (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.[1] The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[2]

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.[3]
- "Mobile home owner," "mobile homeowner," "home owner," or "homeowner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.[4]

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. The division may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., relating to the requirements in the Administrative Procedures Act for the adoption of rules by agencies, to implement and enforce the provisions of ch. 723, F.S, including rules to authorize amendments to an approved prospectus or offering circular and to establish a category of minor violations of ch. 723, F.S., or rules promulgated pursuant hereto.[5] The division may also adopt rules for mediation procedures.[6]

A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of $4 for each mobile home lot within a mobile home park which he or she owns.[7] If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed.

[1] Section 723.004, F.S.
[2] Section 723.002(1), F.S.
[3] Section 723.003(12), F.S.
[4] Section 723.003(11), F.S.
[5] *See* ss. 723.006(7), (8), (9), and (10), F.S.
[6] Section 723.038, F.S.
[7] Section 723.007(1), F.S.

Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in court until the amount due, plus any penalty, is paid.[8]

Additionally, there is a $1 surcharge on each annual fee. The collected surcharge must be deposited in the Florida Mobile Home Relocation Trust Fund by the division.[9]

Mobile Home Park Rent Increases

A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller.[10] The purchaser is also entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.[11]

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement "in an amount deemed appropriate by the mobile home park owner."[12] The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least a 90-day notice of a lot rental increase.[13]

Upon the sale of a mobile home on a rented lot, the amount of a lot rental increase is to be disclosed and agreed to by the purchaser by executing a rental agreement that sets forth the new lot rental amount.[14] A lot rental amount may not be increased during the term of a rental agreement. However, if the rental agreement is for a term of more than 12 months, the lot rental amount may be increased during the rental term but not more frequently than annually. Pass-through charges[15] may also be increased during the term of the rental agreement.[16]

Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.[17] However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.[18]

A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were

[8] *Id.*
[9] Section 723.007(2), F.S.
[10] Section 723.059(3), F.S.
[11] *Id.*
[12] Section 723.059(4), F.S.
[13] Section 723.037(1), F.S.
[14] Section 723.031(5), F.S.
[15] Section 723.003(17), F.S, defines the term "pass-through charge" to mean "the mobile home owner's proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities."
[16] Section 723.031(5)(b), F.S.
[17] Section 723.031(5), F.S.
[18] Section 723.031(5)(c), F.S.

disclosed as a factor for increasing the lot rental amount in the prospectus[19] or rental agreement.[20]

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in the lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. [21] The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner must make the names and addresses available upon request.[22]

Dispute Resolution

A committee of homeowners and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase. The homeowners' committee may consist of no more than five people, who are mobile homeowners in the park and who are designated by a majority of the owners or by the board of directors of the homeowners' association if formed as provided under s. 723.075, F.S.[23] At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.[24]

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the division to initiate mediation if a majority of the affected have designated, in writing, that:[25]

- The rental increase is unreasonable;
- The rental increase has made the lot rental amount unreasonable;
- The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or
- The change in the rules and regulations is unreasonable.

Within 30 days of the last scheduled meeting, a park owner may also petition the division for mediation of the dispute.[26]

If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase.[27] The court may refer the action to nonbinding arbitration pursuant to s. 44.103, F.S.

[19] Before the rental of a mobile home lot, s. 723.011, F.S., requires the park owner of a mobile home park containing 26 or more lots to file a prospectus with the division. The prospectus must include written disclosers to prospective renters, as specified in s. 723.012, F.S.
[20] *Id.*
[21] Section 723.037(1), F.S.
[22] *Id.*
[23] Section 723.037(4)(a), F.S.
[24] Section 723.037(4)(b), F.S.
[25] Section 723.037(5)(a), F.S.
[26] Section 723.037(5)(b), F.S.
[27] Sections 723.038 and 723.0381, F.S.

Section 723.038, F.S., provides that, upon receipt of the petition from either party, the division must appoint a qualified mediator to conduct mediation proceedings unless the parties timely notify the division in writing that they have selected a mediator. The person appointed by the division to serve as mediator must be a qualified mediator from a list of circuit court mediators in each judicial circuit and who has met training and educational requirements established by the Supreme Court. If such mediators are not available, the division may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium.[28] The division must promulgate rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court.[29] The division must also establish, by rule, the fee to be charged by a mediator which shall not exceed the fee authorized by the circuit court.[30]

The division has adopted by rule separate petitions for mediation for filing by the homeowners and the park owner.[31]

Within 20 days of receiving a petition to mediate a dispute, the division must notify the parties that a mediator has been appointed by the division. The parties may accept the mediator appointed by the division or, within 30 days, select a mediator to mediate the dispute.[32] Each party to the mediation must pay a $250 filing fee to the mediator appointed by the division or selected by the parties, within 30 days after the division notifies the parties of the appointment of the mediator. The $250 filing fee must be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used must be refunded to the parties.[33]

The parties may agree to select their own mediator to be governed by the rules of procedure established by the division. The parties may agree to waive mediation, or the petitioning party may withdraw the petition prior to mediation.[34]

The resolution of a dispute arising from a mediation may not be deemed to be final agency action. However, either party may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The circuit court must consider such resolution or agreement made during the mediation to be a contract for the purpose of providing a remedy to the complaining party.[35]

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[28] Section 1004.59, F.S., establishes the Florida Conflict Resolution Consortium at Florida State University "to reduce the public and private costs of litigation; resolve public disputes, including those related to growth management issues, more quickly and effectively; and improve intergovernmental communications, cooperation, and consensus building." *See* Florida Conflict Resolution Consortium at https://consensus.fsu.edu/index.html (last visited Jan. 23, 2024).
[29] *See* Fla. Admin. Code Ch. 61B-32, relating to mobile home mediation rules; and Fla. R. Civ. P. 1.720, providing for mediation procedures.
[30] See Fla. Admin. Code R. 61B-32.0056, relating to the fees for mediators and mediation. The fee amount is based on the county or judicial circuit in which the mobile home park is located and ranges from $175 for up to two hours of mediation to $125 per prorated hour.
[31] See DBPR, Mobile Homes – Forms and Publications, available at: http://www.myfloridalicense.com/DBPR/mobile-homes/forms-and-publications/ (last visited Jan. 24, 2024).
[32] Section 723.038(4), F.S.
[33] *Id.*
[34] Section 723.038(5), F.S.
[35] Section 723.038(6), F.S.

If mediation does not resolve the dispute, either party may file an action in the circuit court.[36]

Invitees – Rights and Obligations

An invitee[37] of a mobile home owner may enter or leave the home owner's site without the home owner or invitee being required to pay additional rent, a fee, or any charge whatsoever. Any mobile home park rule or regulation is null and void if it provides fees or charges to the contrary to this right of access.[38]

All guests, family members, or invitees of a mobile home owner are required to abide by properly promulgated rules and regulations.

Section 723.051(3), F.S., provides that an "invitee" is:

> a person whose stay at the request of a mobile home owner does not exceed 15 consecutive days or 30 total days per year, unless such person has the permission of the park owner or unless permitted by a properly promulgated rule or regulation. The spouse of a mobile home owner shall not be considered an invitee.

III. Effect of Proposed Changes:

Dispute Resolution

The bill amends s. 723.037(5)(b), F.S., to require the mobile homeowner's petition for mediation must be filed with the division for a determination of adequacy and conformance with the types of disputes that are subject to mediation in s. 723.037(5)(a), F.S. The homeowners must provide the following information and documentation to the park owners by certified mail, return receipt requested:

- The homeowner petition for mediation on the form adopted by rule of the Division of Condominiums, Timeshares, and Mobile Homes (division);
- The written required designation, which must include lot identification for each signature;
- The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
- The records that verify the selection of the required homeowners' committee.

The bill also:

- Allows the park owner and the mobile home owners to select a mediator as an alternative to the appointment of a mediator by the division.
- Requires the division to dismiss a petition for mediation that is not timely filed, fails to comply with the petition requirements, or is otherwise found deficient by the division.

[36] Section 723.0381(1), F.S.
[37] Black's Law Dictionary (11th ed. 2019) defines the term "invitee" to mean "someone who has an express or implied invitation to enter or use another's premises, such as a business visitor or a member of the public to whom the premises are held open. The occupier has a duty to inspect the premises and to warn the invitee of dangerous conditions."
[38] Section 723.051(1), F.S.

- Requires the division to assign a mediator with 10 days of after receipt of a petition if the parties have not selected a mediator.

The bill amends ss. 723.038(1) and (4), F.S., to provide that the parties may agree to immediately select a mediator and initiate mediation proceedings pursuant to the criteria outlined in ss. 723.038(2) and (4), F.S., relating to qualifications for mediators and their fees, respectively. It is not clear under current law that the homeowners and the park owner may agree on a mediator before submitting a petition for mediation with the division, as provided in the bill.

If the parties have not selected a mediator, the division must appoint a mediator upon receipt of the petition for mediation and notify the parties within 20 days after such selection. The bill does not define how immediate the division's selection of a mediator must be. Under current law, the must notify the parties that a mediator has been appointed by the division within 20 days of its receipt of the petition for mediation.[39]

The bill also amends s. 723.038(9), F.S., to provide that the mediator selected by the parties has the same judicial immunity in the same manner and extent as a judge. Under current law the mediator appointed by the division has the same judicial immunity in the same manner and extent as a judge.

The bill amends s. 723.0381(1), F.S., to provide that a civil action may not be initiated unless the dispute has been submitted to mediation pursuant to s. 723.037(5), F.S., which provides the process for mediating certain mobile home park disputes, including a dispute related to a rent increase. Current law permits a civil action after mediation of a dispute has failed to resolve a dispute, but does not explicitly bar the initiation of a civil action if the dispute is not submitted for mediation pursuant to s. 723.037(5), F.S.

Invitees – Rights and Obligations

The bill amends s. 723.051(1), F.S., to require that park owners allow a live-in health care aide or assistant as provided under the Fair Housing Act,[40] to enter or leave the home owner's site without that person being required to pay additional rent, a fee, or any charge whatsoever. However, the mobile home owner must provide the information required to have a background check and pay the cost of a background check for the live-in health care aide or assistant if one is necessary.

The bill provides that a live-in health care aide or assistant does not have any rights of tenancy in the park. The bill requires the mobile home owner to notify the park owner or park manager of the name of the live-in health care aide or assistant. The mobile home owner cover is also responsible for any removal of the live-in health care aide and any costs associated with the removal of a live-in health care aide or assistant, if necessary.

[39] Section 723.038(4), F.S.

[40] Part II of ch. 760, F.S., the Fair Housing Act, prohibits certain types of discriminatory housing practices, including in the sale and rental of housing.

Rulemaking

The bill creates an unnumbered section of Florida law to require the division to adopt rules to implement and administer the provision of the bill.

Effective Date

The bill takes effect July 1, 2024.

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.

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:

This bill substantially amends the following sections of the Florida Statutes: 723.037, 723.038, and 723.0381.

This bill creates an undesignated section of Florida law.

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 Fiscal Policy on February 15, 2024:
The committee substitute removes from the bill the provision providing that the purpose of the Florida Mobile home Relocation Corporation (corporation) is to address the voluntary closure of a mobile home park due to a change in the use of land.

The committee substitute also removes from the bill the provisions increasing the payment amounts from the corporation to mobile homeowners for the expense of moving the mobile home to a new location within a 50-mile radius and for abandonment of the mobile home in lieu of its relocation.

CS by Regulated Industries on January 29, 2024:
The committee substitute makes the following substantive revisions to the bill:

- Revises the requirements for the mobile home owner's petition for mediation to require that the petition conform to the types of disputes that are subject to mediation in s. 723.037(5)(a), F.S., and that the homeowners provide the following information and documentation to the park owners by certified mail, return receipt requested:
  - The homeowner petition for mediation on the form adopted by rule of the Division of Condominiums, Timeshares, and Mobile Homes (division);
  - The written required designation, which must include lot identification for each signature;
  - The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
  - Records that verify the selection of the required homeowners' committee.
- Provides that the park owner and the mobile home owners may select a mediator as an alternative to the appointment of a mediator by the division.
- Requires the division to dismiss a petition for mediation if the park owner and mobile home owners fail to comply with the petition requirements.
- Requires the division to assign a mediator with 10 days of after receipt of a petition if the parties have not selected a mediator.
- If the parties have not selected a mediator, requires the division to appoint a mediator upon receipt of the petition for mediation and notify the parties within 20 days after such selection.

- Provides that the mediator selected by the parties has the same judicial immunity in the same manner and extent as a judge;
- Removes the provision allowing the aggrieved party to initiate a civil action if responding party park owner refuses or fails to participate in mediation, and replaces it with a requirement that a civil action in circuit court may not be initiated unless the dispute has been submitted to mediation pursuant to the mediation petition requirements.
- Decreases the maximum payment amount the Florida Mobile Home Relocation Corporation must pay under the bill if a homeowner chooses to abandon a mobile home from $5,000 to $3,000 for a single section mobile home and from $7,000 to $5,000 for a multi-section mobile home.
- Requires the mobile homeowner to provide the information required to have a background check for the line-in health care aide if one is necessary, and is responsible for any removal of the live-in health care aide if necessary;
- Deletes the requirement that a majority of the affected home owners have to agree in writing to file an action before a civil action in circuit court may be initiated;
- Deletes the provision requiring the Division of Law Revision to replace the phrase "this act" where it may occur in s. 723.006(16), F.S.
- Creates an unnumbered section in the bill to require the division to adopt rules to implement and administer the provision in the bill, and deletes the revision to s. 723.006(16), F.S., requiring the division to adopt such rules.
- Removes the republication of the following provisions that are included in the bill for the purpose of incorporating the revisions in the bill: ss. 723.002, 723.004, 723.006, 723.031, 723.033, 723.035, 723.051, 723.068, and 723.078.

B. Amendments:

None.

336002

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Burton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 174 - 244.

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

And the title is amended as follows:

Delete lines 35 - 49

and insert:

336002

necessary and must cover related costs; requiring the division to

By the Committee on Regulated Industries; and Senator Burton

580-02617-24 20241140c1

A bill to be entitled

An act relating to mobile homes; amending s. 720.037, F.S.; requiring that a petition for mediation be filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to determine the adequacy and conformance of the homeowners' petition to initiate mediation; requiring mobile home owners to provide specified documents to the park owner in a specified manner; authorizing the park owner and mobile home owners, by mutual agreement, to select a mediator pursuant to specified provisions; requiring the division to dismiss a petition for mediation under certain circumstances; authorizing the park owner to file objections to the petition for mediation within a specified timeframe; requiring the division to assign a mediator in certain circumstances within a specified timeframe; amending s. 723.038, F.S.; authorizing parties to disputes to jointly select a mediator and initiate mediation proceedings; conforming provisions to changes made by the act; making a technical change; amending s. 723.0381, F.S.; prohibiting the initiation of civil action unless the dispute has been submitted to mediation; amending s. 723.051, F.S.; requiring that specified live-in health care aides have ingress and egress to and from a mobile home owner's site without having to pay charges; providing that the mobile home owner must pay the cost of any necessary background check of such aides; providing that live-in

580-02617-24 20241140c1

heath care aides have no rights of tenancy in the park; requiring the mobile home owner to notify the park owner or manager of certain information related to such aides; providing that the mobile home owner is responsible for removing such aides if it becomes necessary and must cover related costs; amending s. 723.0611, F.S.; providing the purpose of the Florida Mobile Home Relocation Corporation; amending s. 723.0612, F.S.; revising the amounts a mobile home owner is entitled to receive from the corporation for single-section and multisection mobile homes in certain circumstances; revising the timeframe during which a mobile home moving contractor may redeem a voucher for the contract price for relocating a mobile home; revising the amount a mobile home owner may receive when he or she abandons the mobile home inside the mobile home park in lieu of collecting payment from the corporation; revising the amount a park owner must pay the corporation under certain circumstances; making technical changes; requiring the division to adopt rules; providing an effective date.

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

Section 1. Present paragraphs (b), (c), and (d) of subsection (5) of section 723.037, Florida Statutes, are redesignated as paragraphs (c), (e), and (f), respectively, new paragraphs (b) and (d) and paragraphs (g) and (h) are added to that subsection, and present paragraph (b) of that subsection is

amended, to read:

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.—

(5)

(b) A petition for mediation must be filed with the division in all cases for a determination of adequacy and conformance of the petition with the requirements of paragraph (a). Upon filing the petition with the division, the mobile home owners must provide to the park owner, by certified mail, return receipt requested, a copy of the following:

1. The homeowners' petition for mediation on a form adopted by rule of the division;

2. The written designation required by this subsection, which must include lot identification for each signature;

3. The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and

4. The records that verify the selection of the homeowners' committee in accordance with subsection (4).

(c) ~~(b)~~ A park owner, within the same time period, may also petition the division to initiate mediation of the dispute pursuant to s. 723.038.

(d) As an alternative to the appointment of a mediator by the division, the park owner and the mobile home owners may, by mutual agreement, select a mediator pursuant to s. 723.038(2) and (4).

(g) The division shall dismiss a petition for mediation in the event that the park owner and mobile home owners fail to comply with this section.

(h) Within 10 days after receipt of the petition from the homeowners, the park owner may file objections to the petition with the division. The division shall dismiss any petition that is not timely filed, that does not meet the requirements of this subsection, or that is otherwise found deficient by the division. If a mediator has not been selected pursuant to paragraph (d), the division must assign a mediator within 10 days after receipt of the petition by the park owner.

The purpose of this subsection is to encourage discussion and evaluation by the parties of the comparable mobile home parks in the competitive market area. The requirements of this subsection are not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to litigation of any dispute.

Section 2. Subsections (1), (2), (4), and (9) of section 723.038, Florida Statutes, are amended to read:

723.038 Dispute settlement; mediation.—

(1) Either party may petition the division to appoint a mediator and initiate mediation proceedings, or the parties may agree to immediately select a mediator and initiate mediation proceedings pursuant to the criteria outlined in subsections (2) and (4).

(2) The division, upon receipt of a petition, shall appoint a qualified mediator to conduct mediation proceedings and notify the parties within 20 days after such appointment, unless the parties timely notify the division in writing that they have selected a mediator. A person appointed by the division or

selected by the parties must ~~shall~~ be a qualified mediator from a list of circuit court mediators in each judicial circuit who has met training and educational requirements established by the Supreme Court. If such mediators are not available, the division or the parties may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium. The division shall promulgate rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court. The division shall also establish, by rule, the fee to be charged by a mediator which shall not exceed the fee authorized by the circuit court.

(4) Following the date of the last scheduled meeting held pursuant to s. 723.037(4), the parties to a dispute may agree immediately to select a mediator and initiate mediation proceedings pursuant to this section ~~Upon receiving a petition to mediate a dispute, the division shall, within 20 days, notify the parties that a mediator has been appointed by the division~~. The parties may accept the mediator appointed by the division or, within 30 days, select a mediator to mediate the dispute pursuant to subsection (2). The parties shall each pay a $250 filing fee to the mediator appointed by the division or selected by the parties, within 30 days after the division notifies the parties of the appointment of the mediator. The $250 filing fee shall be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used shall be refunded to the parties.

(9) A mediator appointed by the division or selected by the parties pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge.

Section 3. Subsection (1) of section 723.0381, Florida Statutes, is amended to read:

723.0381 Civil actions; arbitration.—

(1) A civil action may not be initiated unless the dispute has been submitted to mediation pursuant to s. 723.037(5). After mediation of a dispute pursuant to s. 723.038 has failed to provide a resolution of the dispute, either party may file an action in the circuit court.

Section 4. Subsection (1) of section 723.051, Florida Statutes, is amended to read:

723.051 Invitees; rights and obligations.—

(1) An invitee of a mobile home owner, or a live-in health care aide as provided for in the Federal Fair Housing Act, must ~~shall~~ have ingress and egress to and from the mobile home owner's site without the mobile home owner, ~~or~~ invitee, or live-in health care aide being required to pay additional rent, a fee, or any charge whatsoever, except that the mobile home owner must pay the cost of a background check for the live-in health care aide if one is required. Any mobile home park rule or regulation providing for fees or charges contrary to the terms of this section is null and void. The live-in health care aide does not have any rights of tenancy in the park, and the mobile home owner must notify the park owner or park manager of the name of the live-in health care aide and provide the information required to have the background check, if one is necessary. The mobile home owner has the responsibility to remove the live-in health care aide should it become necessary and to cover the costs associated with the removal.

Section 5. Paragraph (a) of subsection (1) of section

723.0611, Florida Statutes, is amended to read:

723.0611 Florida Mobile Home Relocation Corporation.—

(1)(a) There is created the Florida Mobile Home Relocation Corporation. The purpose of the corporation is to address the voluntary closure of mobile home parks due to a change in use of the land. The corporation shall be administered by a board of directors made up of six members, three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state, and three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state. All members of the board of directors, including the chair, shall be appointed to serve for staggered 3-year terms.

Section 6. Subsections (1), (4), and (7) of section 723.0612, Florida Statutes, are amended to read:

723.0612 Change in use; relocation expenses; payments by park owner.—

(1) If a mobile home owner is required to move due to a change in use of the land comprising the mobile home park as set forth in s. 723.061(1)(d) and complies with the requirements of this section, the mobile home owner is entitled to payment from the Florida Mobile Home Relocation Corporation of:

(a) The amount of actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or

(b) The amount of $6,500 ~~$3,000~~ for a single-section mobile

home or $11,500 ~~$6,000~~ for a multisection mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.

(4) The Florida Mobile Home Relocation Corporation must approve payment within 45 days after receipt of the information set forth in subsection (3), or payment is deemed approved. A copy of the approval must be forwarded to the park owner with an invoice for payment. Upon approval, the corporation shall issue a voucher in the amount of the contract price for relocating the mobile home. The moving contractor may redeem the voucher from the corporation following completion of the relocation and upon approval of the relocation by the mobile home owner for up to 2 years after the date of issuance.

(7) In lieu of collecting payment from the Florida Mobile Home Relocation Corporation as set forth in subsection (1), a mobile home owner may abandon the mobile home in the mobile home park and collect $3,000 ~~$1,375~~ for a single section and $5,000 ~~$2,750~~ for a multisection from the corporation as long as the mobile home owner delivers to the park owner the current title to the mobile home duly endorsed by the owner of record and valid releases of all liens shown on the title. If a mobile home owner chooses this option, the park owner must ~~shall~~ make payment to the corporation of $1,375 for a single section and $2,750 for a multisection ~~in an amount equal to the amount the mobile home owner is entitled to under this subsection~~. The mobile home owner's application for funds under this subsection requires ~~shall require~~ the submission of a document signed by the park owner stating that the home has been abandoned under this subsection and that the park owner agrees to make payment

to the corporation in the amount provided to the home owner under this subsection. However, in the event that the required documents are not submitted with the application, the corporation may consider the facts and circumstances surrounding the abandonment of the home to determine whether the mobile home owner is entitled to payment pursuant to this subsection. The mobile home owner is not entitled to any compensation under this subsection if there is a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in the use of the mobile home park given pursuant to s. 723.061(1)(d).

Section 7. The division shall adopt rules to implement and administer this act.

Section 8. This act shall take effect July 1, 2024.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

CS/SB 1140
Bill Number (if applicable)

Topic Manufactured Housing

Amendment Barcode (if applicable)

Name Lori Killinger

Job Title

Address 106 E. College Ave
Street

Phone 850. 222-5702

Tallahassee FL 32301
City *State* *Zip*

Email lkillinger@llw-law.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Manufactured Housing Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/24
Meeting Date

CS/SB 1140
Bill Number (if applicable)

Topic Manufactured Housing

Amendment Barcode (if applicable)

Name Nancy Stewart

Job Title

Address 1400 Village Square Blvd Ste 3-156
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-385-7805

Email nancy.stewart@nancyblackstewart.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Federation of Manufactured Home Owners of FL, Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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

2/15/24-12:00PM
Meeting Date

Fiscal Policy
Committee

1140 - Mobile Homes
Bill Number or Topic

Amendment Barcode (if applicable)

Name AARP - Karen Murillo

Phone 850-567-0414

Address 215 S. Monroe St., Ste. 603
Street

Email kmurillo@aarp.org

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:
AARP

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 1188
INTRODUCER:	Health Policy Committee and Senator Garcia
SUBJECT:	Office Surgeries
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Fav/CS**
2.	Rossitto-Van Winkle	Yeatman	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1188 provides additional enforcement authority to the Department of Health (DOH) over physician offices in which physicians perform certain liposuction procedures or gluteal fat grafting procedures, also known as Brazilian Butt Lifts (BBLs).

The bill requires that, in addition to other circumstances that require office registration:

- Physicians must register their offices with the DOH if they perform liposuction procedures in their offices in which more than 1,000 cc of supernatant fat is temporarily or permanently removed. Current law does not specify temporarily or permanently.
- Physicians must register their offices with the DOH if they perform gluteal fat grafting procedures in their offices. Current law does not expressly require registration for the performance of such procedures by name.
- Physicians must register their offices with the DOH if they perform liposuction procedures in their offices during which the patient is rotated 180 degrees or more.

The bill modifies the penalty for performing surgery in an unregistered office, if the surgery requires office registration, from a fine of $5,000 per day to $5,000 per incident, to allow the DOH to fine a physician for multiple offenses committed during the same day.

The bill requires that physicians who have registered their offices prior to July 1, 2024, must re-register, in accordance with a schedule developed by the DOH, if a physician performs gluteal

fat grafting procedures or liposuction procedures in which the patient is rotated 180 degrees or more in that office.

The bill requires that if, during the re-registration process, the DOH determines that the procedures being performed in the office create a significant risk to patient safety and the interests of patient safety would be better served if the office were licensed and regulated as an ambulatory surgical center (ASC), then the DOH must notify the Agency for Health Care Administration (AHCA) and the AHCA must inspect the office and determine, in the interests of patient safety, whether the office is a candidate for ASC licensure. If the AHCA determines the office is a candidate for ASC licensure, then the bill requires the AHCA to notify the office and the DOH. The bill requires that an office so notified must cease performing procedures that require re-registration and prohibits such procedures from being performed there until the office relinquishes its registration and obtains an ASC license.

The bill also applies the heightened inspection procedure (described above for offices required to seek re-registration) to an office seeking initial registration, if the DOH determines that a physician is likely to perform, or will be performing, liposuction procedures during which the patient is rotated 180 degrees or more or gluteal fat grafting procedures in the office.

The bill takes effect upon becoming law.

II. Present Situation:

Regulation of Office Surgeries

The Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM) (collectively, the boards)[1], within the DOH[2], have authority to adopt rules to regulate practice of medicine and osteopathic medicine, respectively. The boards have authority to establish, by rule, standards of practice for particular settings.[3] Such standards may include education and training; medications, including anesthetics; assistance of and delegation to other personnel; sterilization; performance of complex or multiple procedures; records; informed consent; and policy and procedures manuals.[4]

The boards set forth the standards of practice that must be met for office surgeries. An office surgery is any surgery that is performed outside a facility licensed under ch. 390, F.S., or ch. 395, F.S.[5] There are several levels of office surgeries governed by rules adopted by the boards, which set forth the scope of each level of office surgeries, the equipment and medications that must be available, and the training requirements for personnel present during the surgery.

[1]Chapter 458, F.S., regulates the practice of allopathic medicine, and ch. 459, F.S., regulates the practice of osteopathic medicine.
[2] The Dept. of Health, Division of Medical Quality Assurance (MQA), serves as the principle administrative unit for the Board of Medicine and the Board of Osteopathic Medicine.
[3] Sections 458.331(v) and 459.015(z), F.S.
[4] *Id.*
[5] Fla. Admin. Code Rs. 64B8-9.009(1)(d) and 64B15-14.007(1)(d), (2023). Abortion clinics are licensed under ch. 390, F.S., and facilities licensed under ch. 395, F.S., include hospitals, ambulatory surgery centers, mobile surgical facilities, and certain intensive residential treatment programs.

Registration

A physician is required to register his or her office with the DOH to perform liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed, a level II office surgery, or a level III office surgery.[6]

Each registered office must designate a physician who is responsible for complying with all laws and regulations establishing safety requirements for such offices.[7] The designated physician is required to notify the DOH within 10 days of hiring any new recovery or surgical team personnel.[8] The office must notify the DOH within 10 calendar days after the termination of a designated physician relationship.[9]

The DOH must inspect any office where office surgeries will be done before the office is registered.[10] If the office refuses such inspection, it will not be registered until the inspection can be completed. If an office that has already been registered with the DOH refuses inspection, its registration will be immediately suspended and remain suspended until the inspection is completed, and the office must close for 14 days.[11]

The DOH must inspect each registered office annually unless the office is accredited by a nationally recognized accrediting agency approved by the respective board. Such inspections may be unannounced.[12]

The DOH's license verification web page indicates there are 1,816 office surgery registrations.[13]

Standards of Practice

Prior to performing any surgery, a physician must evaluate the risks of anesthesia and the surgical procedure to be performed.[14] A physician must maintain a complete record of each surgical procedure, including the anesthesia record, if applicable, and written informed consent.[15] The written consent must reflect the patient's knowledge of identified risks, consent to the procedure, type of anesthesia and anesthesia provider, and that a choice of anesthesia provider exists.[16]

[6] Sections 458.328(1) and 459.0138(1), F.S.
[7] Fla Admin. Code Rs. 64B8-9.0091(1) and 64B15-14.0076(1), (2023).
[8] *Id.*
[9] *Id.*
[10] *Supra* note 5.
[11] *Id.*
[12] *Id.*
[13] Florida Agency for Health Care Administration, House Bill 1561, 2024 Agency Legislative Bill Analysis (Jan. 18, 2024) (on file with the Senate Committee on Health Policy).
[14] Fla. Admin. Code Rs. 64B8-9.009(2) and 64B15-14.007(2), (2023).
[15] *Id.* A physician does not need to obtain written informed consent for minor Level I procedures limited to the skin and mucosa.
[16] *Id.* A patient may use an anesthesiologist, anesthesiologist assistant, another appropriately trained physician, certified registered nurse anesthetist, or physician assistant.

Physicians performing office surgeries must maintain a log of all liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed and Level II and Level III surgical procedures performed, which includes:[17]

- A confidential patient identifier;
- The time the patient arrives in the operating suite;
- The name of the physician who provided medical clearance;
- The surgeon's name;
- The diagnosis;
- The CPT codes for the procedures performed;
- The patient's ASA classification;
- The type of procedure performed;
- The level of surgery;
- The anesthesia provider;
- The type of anesthesia used;
- The duration of the procedure;
- The type of post-operative care;
- The duration of recovery;
- The disposition of the patient upon discharge;
- A list of medications used during surgery and recovery; and
- Any adverse incidents.

Such logs must be maintained for at least six years from the last patient contact and must be provided to the DOH investigators upon request.[18]

For elective cosmetic and plastic surgery procedures performed in a physician's office:[19]

- The maximum planned duration of all planned procedures cannot exceed eight hours.
- A physician must discharge the patient within 24 hours, and overnight stay may not exceed 23 hours and 59 minutes.
- The overnight stay is strictly limited to the physician's office.
- If the patient has not sufficiently recovered to be safely discharged within the 24-hour period, the patient must be transferred to a hospital for continued post-operative care.

Office surgeries are prohibited from:

- Resulting in blood loss greater than ten percent of blood volume in a patient with normal hemoglobin;
- Requiring major or prolonged intracranial, intrathoracic, abdominal, or joint replacement procedures, excluding laparoscopy;
- Involving a major blood vessel with direct visualization by open exposure of the vessel, not including percutaneous endovascular treatment[20]; or
- Being emergent or life threatening.

[17] Fla. Admin. Code Rs. 64B8-9.009(2)(a) and 64B15-14.007(2)(a), (2023).
[18] *Id.*
[19] Fla. Admin. Code Rs. 64B8-9.009(2)(f) and 64B15-14.007(2)(f), (2023).
[20] Such treatment addresses conditions such as peripheral artery disease and other arterial blockages.

Levels of Office Surgeries

Level I

Level I involves the most minor of surgeries, which require minimal sedation[21] or local or topical anesthesia, and have a remote chance of complications requiring hospitalization.[22] Level I procedures include:[23]

- Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas and repair of lacerations, or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient;
- Liposuction involving the removal of less than 4,000 cc supernatant fat; and
- Incision and drainage of superficial abscesses, limited endoscopies such as proctoscopies, skin biopsies, arthrocentesis, thoracentesis, paracentesis, dilation of urethra, cryptoscopic procedures, and closed reduction of simple fractures or small joint dislocations (e.g., finger and toe joints).

Level II

Level II office surgeries involve moderate sedation[24] and require the physician office to have a transfer agreement with a licensed hospital that is no more than 30 minutes from the office.[25] Level II office surgeries, include but are not limited to:[26]

- Hemorrhoidectomy, hernia repair, large joint dislocations, colonoscopy, and liposuction involving the removal of up to 4,000 cc supernatant fat; and
- Any surgery in which the patient's level of sedation is that of moderate sedation and analgesia or conscious sedation.

A physician performing a Level II office surgery must:[27]

- Have staff privileges at a licensed hospital to perform the same procedure in that hospital as the surgery being performed in the office setting;
- Demonstrate to the appropriate board that he or she has successfully completed training directly related to and include the procedure being performed, such as board certification or eligibility to become board-certified; or
- Demonstrate comparable background, training, or experience.

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[21] Minimal sedation is a drug-induced state during which the patient responds normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are not impaired. Controlled substances are limited to oral administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

[22] Fla. Admin. Code Rs. 64B8-9.009(3) and 64B15-14.007(3), (2023).

[23] *Id.*

[24] Moderate sedation or conscious sedation is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulations. No interventions are needed to manage the patient's airway and spontaneous ventilation is adequate. Cardiovascular function is maintained. Reflex withdrawal from a painful stimulus is not considered a purposeful response.

[25] Fla. Admin. Code Rs. 64B8-9.009(4) and 64B15-14.007(4), (2023).

[26] *Id.*

[27] *Id.*

A physician, or a facility where the procedure is being performed, must have a transfer agreement with a licensed hospital within a reasonable proximity[28] if the physician performing the procedure does not have staff privileges to perform the same procedure at a licensed hospital within a reasonable proximity.

Anesthesiology must be performed by an anesthesiologist, a certified registered nurse anesthetist (CRNA), or a qualified physician assistant (PA). An appropriately-trained physician, PA, or registered nurse with experience in post-anesthesia care, must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia.[29]

Level IIA

Level IIA office surgeries are those Level II surgeries with a maximum planned duration of five minutes or less and in which chances of complications requiring hospitalization are remote.[30] A physician, physician assistant, registered nurse, or licensed practical nurse must assist the surgeon during the procedure and monitor the patient in the recovery room until the patient is recovered from anesthesia.[31] The assisting health care practitioner must be appropriately certified in advanced cardiac life support, or in the case of pediatric patients, pediatric advanced life support.[32]

Level III

Level III office surgeries are the most complex and require deep sedation or general anesthesia.[33] A physician performing the surgery must have staff privileges to perform the same procedure in a hospital.[34] The physician must also have knowledge of the principles of general anesthesia.

Only patients classified under the American Society of Anesthesiologist's (ASA) risk classification criteria as Class I or II[35] are appropriate candidates for Level III office surgery. For all ASA Class II patients above the age of 50, the surgeon must obtain a complete work-up

[28] Transport time to the hospital must be 30 minutes of less.
[29] *Id.* The assisting practitioner must be trained in advanced cardiovascular life support, or for pediatric patients, pediatric advanced life support.
[30] Fla. Admin. Code Rs. 64B-9.009(5) and 64B15-14.007(5), (2023).
[31] *Id.*
[32] *Id.*
[33] Deep sedation is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. A patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. General anesthesia is a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. The use of spinal or epidural anesthesia is considered Level III.
[34] Fla. Admin. Code Rs. 64B8-9.009(6) and 64B15-14.007(6), (2023). The physician may also document satisfactory completion of training directly related to and include the procedure being performed.
[35] An ASA Class I patient is a normal, healthy, non-smoking patient, with no or minimal alcohol use. An ASA Class II patient is a patient with mild systemic disease without substantive functional limitations. Examples include current smoker, social alcohol drinker, pregnancy, obesity, well-controlled hypertension with diabetes, or mild lung disease. *See* American Society of Anesthesiologists, *ASA Physical Status Classification System*, (Oct. 15, 2014, last amended Dec. 13, 2020), available at https://www.asahq.org/standards-and-guidelines/asa-physical-status-classification-system (last visited on Feb. 2, 2024).

performed prior to the performance of Level III surgery in a physician office setting.[36] If the patient has a cardiac history or is deemed to be a complicated medical patient, the patient must have a preoperative electrocardiogram and be referred to an appropriate consultant for medical optimization. The referral to a consultant may be waived after evaluation by the patient's anesthesiologist.[37] All Level III surgeries on patients classified as ASA III[38] and higher must be performed in a hospital or an ambulatory surgery center.

During the procedure, the physician must have one assistant who has current certification in advanced cardiac life support. Additionally, the physician must have emergency policies and procedures related to serious anesthesia complications, which address:

- Airway blockage (foreign body obstruction);
- Allergic reactions;
- Bradycardia;
- Bronchospasm;
- Cardiac arrest;
- Chest pain;
- Hypoglycemia;
- Hypotension;
- Hypoventilation;
- Laryngospasm;
- Local anesthetic toxicity reaction; and
- Malignant hypothermia.

Gluteal Fat Grafting Procedure

Gluteal fat grafting (a.k.a. the Brazilian Butt Lift or BBL) is a surgical procedure that takes supernatant fat from one part of a person's body by liposuction, usually from the waist, back, or abdomen, purifies the supernatant fat, and then injects the supernatant fat in tiny droplets back into the patient's buttocks. The amount of supernatant fat that is temporarily removed from one part of the body and then transferred to the buttocks varies greatly between patients, and the patient may be turned 180 degrees while under general anesthesia following harvesting of the supernatant fat.[39]

When a surgeon performs a gluteal fat grafting procedure in an office setting, supernatant fat is removed from various parts of the patient's body but may only be injected into the subcutaneous space of the buttocks and must never cross the gluteal muscle fascia. Intramuscular or submuscular fat injections are prohibited.[40]

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[36] *Id.*
[37] *Id.*
[38] An ASA Class III patient is a patient with severe systemic disease who has substantive functional limitations and/or one or more moderate to severe diseases. This may include poorly controlled diabetes or hypertension, chronic obstructive pulmonary disease, morbid obesity, active hepatitis, alcohol dependence or abuse, implanted pacemaker, premature infant, recent history of myocardial infarction, cerebrovascular disease, transient ischemic attack, or coronary artery disease.
[39] McLintock, Kaitlyn, *Your Comprehensive Guide To The Brazilian Butt Lift*, (Oct. 29, 2021) available at https://plasticsurgerypractice.com/treatment-solutions/innovations/industry-trends/your-comprehensive-guide-to-the-brazilian-butt-lift/ (last visited Feb. 2,, 2024).
[40] Fla. Admin. Code Rs. 64B8-9.009(2)(c) and 64B15-14.007(2)((c) (2023).

The risks associated with a gluteal fat grafting procedure include:[41]

- Excessive bleeding;
- Fat embolism, or fat that gets stuck in a vein and then in the lungs;
- Seroma, or fluid build-up under the skin;
- Necrosis, or large volumes of supernatant fat cells that fail to survive transfer;
- Significant scarring;
- Undesirable results; and
- Death.

The rate of fatal complications from gluteal fat grafting is higher than any other cosmetic procedure.[42] South Florida carries the highest BBL mortality rate, by far, in the nation with 25 deaths occurring between 2010 and 2022.[43] According to a study of the deaths that occurred in South Florida, the surgical setting and the short surgical times for these cases were the most significant contributing factors to the deaths.[44] Of the 25 deaths, 23 of the surgeries were found to have been performed at what the researchers classified as high-volume, low-budget clinics. These clinics were found to have employed a practice model based on minimal patient interaction. All of the deaths resulted from pulmonary fat embolism, which occurs when a vein wall is injured during the injection process, allowing fat to enter the pulmonary vessels.[45]

360 Degree Liposuction Procedures

The 360 degree Liposuction may include liposuction of areas of body, including but not limited to the following, while under general anesthesia:

- Upper back;
- Lower back;
- Hip roll;
- Mid back;
- Flanks;
- Abdomen;
- Arms;
- Thighs; and
- Presacral triangle.

The 360 Degree Liposuction Combined with a BBL

The 360 degree liposuction with the BBL is a new popular cosmetic procedure and is actually two surgical procedures performed at the same time.[46] The 360 degree liposuction harvests excess supernatant fat from various areas of the body as noted above and involves turning the

[41] Cleveland Clinic, *Fat Transfer*, available at https://my.clevelandclinic.org/health/treatments/24027-fat-transfer (last visited Feb. 2, 2024).
[42] Pazmiño, Pat; Garcia, Onelio, *Brazilian Butt Lift–Associated Mortality: The South Florida Experience*, Aesthetic Surgery Journal, Vol. 43, (Feb 2023), pps. 162–178, available at https://doi.org/10.1093/asj/sjac224 (last visited Feb. 2, 2024).
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] Kao, Y.-M.; Chen, K.-T.;Lee, K.-C.; Hsu, C.-C.; Chien, Y.-C., *Pulmonary Fat Embolism Following Liposuction and Fat Grafting: A Review of Published Cases.* Healthcare (May 11 2023), 11, 1391. available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10218620/pdf/healthcare-11-01391.pdf (last visited Feb. 2, 2024).

patient over 360 degrees while under general anesthesia; and then placing the patient on his or her abdomen, face down, and undergoing a BBL.[47]

The risks associated with the 360 degree liposuction with the BBL includes:
- Hemorrhage;
- Pain;
- Skin discoloration;
- Infections,
- Fluid accumulation;
- Blood building up at the incision or underneath the buttocks;
- Skin loss; and
- Pulmonary embolism.[48]

Adding the BBL to 360 degree liposuction makes the procedure longer and potentially more dangerous, especially regarding the complication of a fat embolism and excessive blood loss, which could lead to death.[49]

The Vasovagal Response

During general anesthesia for a 360 degree liposuction and BBL there is also the possible complication of excessive vasovagal stimulation caused by turning the patient over 180 degrees or 360 degrees, creating life-threatening vasovagal syncope and triggering bradycardia, hypotension, and progressing to cardiac arrest and even death.[50] Painful stimulus of the bronchial, pharyngeal, laryngeal, esophageal mucosa and peritoneum stretch, and reduced blood volume can increase the vagal activity, leading to severe bradycardia, hypotension, and cardiac arrest. Even venous cannulation, neuraxial, and regional anesthesia techniques have been attributed to vasovagal syncope.[51]

Under Florida law, liposuction may be performed in combination with another separate surgical procedure during a single Level II or Level III operations, only in the following circumstances:[52]
- When combined with abdominoplasty, liposuction may not exceed 1,000 cc of supernatant fat;
- When liposuction is associated and directly related to another procedure, the liposuction may not exceed 1,000 cc of supernatant fat; and

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[47] McLintock, Kaitlyn, *Your Comprehensive Guide To The Brazilian Butt Lift,* (Oct. 29, 2021) available at https://plasticsurgerypractice.com/treatment-solutions/innovations/industry-trends/your-comprehensive-guide-to-the-brazilian-butt-lift/ (last visited Feb. 2, 2024).
[48] *Id.*
[49] Kaiser HA, Saied NN, Kokoefer AS, Saffour L, Zoller JK, Helwani MA.,PLOS ONE, (Jan. 22, 2020) Incidence and prediction of intraoperative and postoperative cardiac arrest requiring cardiopulmonary resuscitation and 30-day mortality in non-cardiac surgical patients, available at https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0225939&type=printable (last visited Feb. 2, 2024).
[50] *Id.*
[51] Hosie L, Wood JP, Thomas AN. Vasovagal syncope and anaesthetic practice. Eur. J. Anaesthesiology(Aug. 2001) available at https://journals.lww.com/ejanaesthesiology/fulltext/2001/08000/vasovagal_syncope_and_anaesthetic_practice.11.aspx (last visited Feb. 2, 2024).
[52] Fla. Admin. Code Rs. 64B8-9.009(2)(e) and 64B15-14.007(2)((e) (2023).

- Major liposuction in excess of 1,000 cc supernatant fat may not be performed in a remote location from any other procedure.

A maximum of 4,000 cc supernatant fat may be removed by liposuction in the office setting.[53]

Standards of Practice for a Gluteal Fat Grafting Procedures in Office Surgery Setting

A physician performing a gluteal fat grafting procedure in an office setting must conduct an in-person examination of the patient while physically present in the same room as the patient, no later than the day before the procedure.[54]

If a surgeon desires to delegate any of his or her duties during a gluteal fat grafting procedure, he or she must obtain the patient's written, informed consent for the delegation. Any delegated duty must be performed under the direct supervision of the physician performing the procedure. The surgeon may not delegate the supernatant extraction or the gluteal fat injections. The supernatant fat may only be injected into the subcutaneous space of the patient's buttocks and may not cross the fascia overlying the gluteal muscle. Intramuscular or submuscular supernatant fat injections are prohibited.[55]

When the physician performing a gluteal fat grafting procedure injects the supernatant fat into the subcutaneous space of the patient's buttocks, the physician must use ultrasound guidance, or another form of guidance or technology authorized under BOM or BOOM rule, as applicable, which is equal to, or exceeds, the quality of ultrasound, during the placement and navigation of the cannula, to ensure that the supernatant fat is injected into the subcutaneous space above the fascia overlying the gluteal muscle. Ultrasound guidance is not required for other portions of the procedure.[56]

Adverse Incident Reporting

A physician must report any adverse incident that occurs in an office setting to the DOH within 15 days after the occurrence.[57] An adverse incident in an office setting is defined as an event over which the physician or licensee could exercise control and which is associated with a medical intervention and results in one of the following patient injuries:[58]

- The death of a patient;
- Brain or spinal damage to a patient;
- The performance of a surgical procedure on the wrong patient;
- If the procedure results in death; brain or spinal damage; permanent disfigurement; the fracture or dislocation of bones or joints; a limitation of neurological, physical, or sensory functions; or any condition that required the transfer of a patient, the performance of:
  - A wrong-site surgical procedure;
  - A wrong surgical procedure; or

[53] Fla. Admin. Code Rs. 64B8-9.009(2)(d) and 64B15-14.007(2)((d) (2023).
[54] Sections 458.328(2)(c) and 459.0138 (2)(c), F.S.
[55] *Id.*
[56] *Id.*
[57] Sections 458.351 and 459.026, F.S.
[58] Sections 458.351(4) and 459.026(4), F.S.

    - A surgical repair of damage to a patient resulting from a planned surgical procedure where the damage is not a recognized specific risk as disclosed to the patient and documented through the informed consent process;
- A procedure to remove unplanned foreign objects remaining from a surgical procedure; or
- Any condition that required the transfer of a patient to a hospital from an ambulatory surgical center or any facility or any office maintained by a physician for the practice of medicine which is not licensed under ch. 395, F.S.

The DOH must review each adverse incident report to determine if discipline against the practitioner's license is warranted.[59]

DOH Regulatory Authority of Office Surgeries

The DOH and the respective boards may deny or revoke an office surgery's registration if any of its physicians, owners, or operators do not comply with any office surgery laws or rules. The DOH may deny a person applying for a facility registration if he or she was named in the registration document of an office whose registration is revoked for five years after the revocation date. The DOH may impose penalties on the designated physician if the registered office is not in compliance with safety requirements, including:[60]

- Suspension or permanent revocation of a license;
- Restriction of license;
- Imposition of an administrative fine not to exceed $10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board must impose a fine of $10,000 per count or offense;
- Issuance of a reprimand or letter of concern:
- Placement of the licensee on probation for a period of time and subject to such conditions as specified by the board;
- Corrective action;
- Imposition of an administrative fine in accordance with s. 381.0261, F.S., for violations regarding patient rights;
- Refund of fees billed and collected from the patient or a third party on behalf of the patient; or
- Requirement that the licensee undergo remedial education.

The DOH, via the Surgeon General, can also issue an emergency order suspending or restricting the registration of a facility if there is probable cause that:

- The office or its physicians are not in compliance with board rule on the standards of practice or The licensee or registrant is practicing or offering to practice beyond the scope allowed by law or beyond his or her competence to perform; and
- Such noncompliance constitutes an immediate danger to the public.

The boards must adopt rules establishing the standards of practice for physicians who perform office surgery. The boards must fine physicians who perform office surgeries in an unregistered

[59] Sections 458.351(5) and 459.026(5), F.S.
[60] Section 456.072(2), F.S.

facility $5,000 per day. Performing office surgery in a facility that is not registered with the DOH is grounds for disciplinary action against a physician's license.

Ambulatory Surgical Centers

An ASC is a facility that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within 24 hours.[61] If a provider anticipates or knows that he or she will be discharging patients beyond 24 hours, he or she must self-designate as an ASC by applying for ASC licensure with the AHCA. An ASC is licensed and regulated by the AHCA under the same regulatory framework as hospitals.[62] Currently, there are 520 licensed ASCs in Florida.[63]

III. Effect of Proposed Changes:

CS/SB 1188 requires physicians to register their offices with the DOH if they perform liposuction procedures in their offices in which more than 1,000 cc of supernatant fat is temporarily or permanently removed. Current law does not specify temporarily or permanently.

The bill requires physicians to register their offices with the DOH if they perform gluteal fat grafting procedures in their offices. Current law does not expressly require registration for the performance of such procedures by name.

The bill requires physicians to register their offices with the DOH if they perform liposuction procedures in their offices during which the patient is rotated 180 degrees or more.

The bill modifies the penalty for performing surgery in an unregistered office, if the surgery requires office registration, from a fine of $5,000 per day to $5,000 per incident, to allow the DOH to fine a physician for multiple offenses committed during the same day.

The bill requires that physicians who have registered their offices prior to July 1, 2024, must re-register, in accordance with a schedule developed by the DOH, if a physician performs gluteal fat grafting procedures or liposuction procedures in which the patient is rotated 180 degrees or more in that office.

The bill requires that if, during the re-registration process, the DOH determines that the procedures being performed in the office create a significant risk to patient safety and the interests of patient safety would be better served if the office were licensed and regulated as an ASC, then the DOH must notify the AHCA, and the AHCA must inspect the office and determine, in the interests of patient safety, whether the office is a candidate for ASC licensure, notwithstanding the office's failure to meet all requirements associated with such licensure at the time of inspection and notwithstanding any pertinent exceptions provided in the definition of an

[61] Section 395.002(3), F.S.
[62] Sections 395.001-.1065, F.S., and Part II, Chapter 408, F.S.
[63] Florida Agency for Health Care Administration, House Bill 1561, 2024 Agency Legislative Bill Analysis (Jan. 18, 2024) (on file with the Senate Committee on Health Policy).

ASC under s. 395.002(3), F.S.[64] If the AHCA determines that the office is a candidate for ASC licensure, then the bill requires the AHCA to notify the office and the DOH. The bill requires that an office so notified must cease performing procedures that require re-registration and prohibits such procedures from being performed there until the office relinquishes its registration and obtains an ASC license.

The bill also applies the heightened inspection procedure (described above for offices required to seek re-registration) to an office seeking initial registration, if the DOH determines that a physician is likely to perform, or will be performing, liposuction procedures during which the patient is rotated 180 degrees or gluteal fat grafting procedures in the office.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

A portion of the bill may present an unconstitutional delegation of legislative authority under Article II, Section 3 of the Florida Constitution.

During an office's initial registration process, and the re-registration process required under the bill, the bill requires that *"if the [DOH] determines that the performance of such procedures in the office creates a significant risk to patient safety and that the interests of patient safety would be better served if such procedures were instead regulated under the requirements of ambulatory surgical center licensure under chapter 395:"*

- The DOH must notify the AHCA of its determination;
- The AHCA must inspect the office "*and determine, in the interest of patient safety, whether the office is a candidate for ambulatory surgical center licensure notwithstanding the office's failure to meet all requirements associated with such*

[64] Section 395.002(3), F.S., provides exceptions from the definition of an ASC, including that an office maintained by a physician for the practice of medicine may not be construed to be an ASC.

licensure at the time of inspection and notwithstanding the exceptions provided under s. 395.002(3)"; and

- If the AHCA determines that an office is a *"candidate"* for ASC licensure, then the AHCA must notify the office and the DOH, and the office must cease performing procedures requiring re-registration.

The bill:

- Does not define *"a significant risk to patient safety;"*
- Does not provide criteria for the DOH or the AHCA inspectors to utilize in determining what *"creates a significant risk to patient safety"* such that *"the interests of patient safety would be better served"* if such procedures were instead regulated under the requirements of an ASC; and
- Does not define what is meant by *"a candidate for ambulatory surgical center licensure."*

These missing items in the bill could be interpreted to represent fundamental pieces of state policy that the Legislature may need to create instead of delegating that task to the executive branch.

As such, this portion of the bill may represent an unconstitutional delegation of legislative authority under Article II, Section 3 of the Florida Constitution. *See* Askew v. Cross Key Waterways, 372 So. 2d 913, 925 (Fla. 1978); see also Avatar Dev. Corp. v. State; 723 So. 2d 199, 202 (Fla. 1998) (citing Askew with approval). "…fundamental and primary policy decisions must be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DOH, MQA will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System (LEIDS) and Iron Data Mobile (IDM) inspection software to update inspection requirements. MQA will also experience a non-recurring workload increase to update the artificial intelligence virtual agent (ELI) for voice and web, Search Services application,

data reporting, and board and DOH websites. Additionally, MQA may be required to create data exchange services with the AHCA.[65]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, certain office surgery registrants need to be re-registered and inspected by December 1, 2024. The DOH advises that it currently has five OPS registered nurse consultants to complete such inspections, and it would take approximately six months to re-register and inspect all affected physician offices, if the nurse consultants do no other DOH work. Based on this, DOH requests the re-registration timeframe be extended to June 30, 2025.[66]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.328 and 459.0138.

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 Health Policy on February 6, 2024:
The committee substitute applies the bill's heightened inspection procedure (that the bill requires for offices seeking re-registration) to applicants for initial office surgery registration, if the DOH determines that a physician will perform, or is likely to perform, liposuction procedures during which the patient is rotated 180 degrees or more or gluteal fat grafting procedures in the office.

B. Amendments:

None.

[65] Florida Department of Health, House, Senate Bill 1188, 2024 Agency Legislative Bill Analysis (Jan. 11, 2024) (on file with the Senate Committee on Health Policy).
[66] *Id.*

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Fiscal Policy (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 458.328, Florida Statutes, is amended to read:

458.328 Office surgeries.—

(1) REGISTRATION.—

(a)~~1.~~ An office in which a physician performs or intends to perform a liposuction procedure in which more than 1,000 cubic


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centimeters of supernatant fat is temporarily or permanently removed, a liposuction procedure during which the patient is rotated between the supine, lateral, and prone positions, a Level II office surgery, or a Level III office surgery must register with the department. ~~unless the office is licensed as~~ A facility licensed under chapter 390 or chapter 395 may not be registered under this section.

(b)~~2.~~ The department must complete an inspection of any office seeking registration under this section before the office may be registered.

1. The inspection of the office seeking registration under this section must include inspection for compliance with the standards of practice set out in this section and s. 458.3281 and any applicable board rules for the levels of office surgery and procedures listed on the application which any physician practicing at the office performs or intends to perform. The application must be updated within 10 calendar days before any additional surgical procedures or levels of office surgery are to be performed at the office. Failure to timely update the application for any such additional surgical procedures or levels of office surgery is a violation of this section and subject to discipline under ss. 456.072 and 458.331.

2. The department must immediately suspend the registration process of an office that refuses an inspection under subparagraph 1., and the applicant must be required to reapply for registration.

3. If the department determines that an office seeking registration under this section is one in which a physician may perform, or intends to perform, liposuction procedures that

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include a patient being rotated between the supine, lateral, and prone positions during the procedure, or in which a physician may perform, or intends to perform, gluteal fat grafting procedures, the office must provide proof to the department that it has met the applicable requirements of s. 469 of the Florida Building Code, relating to office surgery suites, and s. 458.3281 and the applicable rules adopted thereunder, and the department must inspect the office to ensure that all of the following are present or in place:

a. Equipment and a procedure for measuring and documenting in a log the amount of supernatant fat removed, both temporarily and permanently, from a particular patient, including tissue disposal procedures.

b. A procedure for measuring and documenting the amount of lidocaine injected for tumescent liposuction, if used.

c. Working ultrasound guidance equipment or other guidance technology authorized under board rule which equals or exceeds the quality of ultrasound guidance.

d. The office procedure for obtaining blood products.

e. Documentation on file at the office demonstrating that any physician performing these procedures has privileges to perform such procedures in a hospital no more than 20 minutes away.

f. Procedures for emergency resuscitation and transport to a hospital.

g. Procedures for anesthesia and surgical recordkeeping.

h. Any additional inspection requirements, as set by board rule.

4. If an applicant is unable to provide proof to the


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department that the office seeking registration is in compliance with the applicable requirements of s. 469 of the Florida Building Code, relating to office surgery suites, or s. 458.3281 or the applicable rules adopted thereunder, in accordance with subparagraph 3., the department must notify the Agency for Health Care Administration and request the agency to inspect the office and consult with the office about the process to apply for ambulatory surgical center licensure under chapter 395 and how the office may seek qualification for such licensure, notwithstanding the office's failure to meet all requirements associated with such licensure at the time of inspection and notwithstanding any pertinent exceptions provided under s. 395.002(3).

(c) ~~(b)~~ To be ~~By January 1, 2020, each office~~ registered under this section or s. 459.0138, an office must, at the time of application, list a designated ~~designate a~~ physician who is responsible for the office's compliance with the office health and safety requirements of this section and rules adopted hereunder. A designated physician must have a full, active, and unencumbered license under this chapter or chapter 459 and shall practice at the office for which he or she has assumed responsibility. Within 10 calendar days after the termination of a designated physician relationship, the office must notify the department of the designation of another physician to serve as the designated physician. The department may not register an office if the office fails to comply with this requirement at the time of application and must seek an emergency suspension of ~~suspend~~ the registration of an office pursuant to s. 456.074(6) if the office fails to timely notify the department of its new

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designated physician within 10 calendar days after the termination of the previous designated physician relationship ~~comply with the requirements of this paragraph~~.

(d) As a condition of registration, each office must, at the time of application, list all medical personnel who will be practicing at the office, including all of the following:

1. Physicians who intend to practice surgery or assist in surgery at the office seeking registration, including their respective license numbers and practice addresses.

2. Anesthesia providers, including their license numbers.

3. Nursing personnel licensed under chapter 464, including their license numbers unless already provided under subparagraph 2.

4. Physician assistants, including their respective license numbers and supervising physicians.

The office must notify the department of the addition or termination of any of the types of medical personnel specified under this paragraph within 10 calendar days before such addition or after such termination. Failure to timely notify the department of such addition or termination is a violation of this section and subject to discipline under ss. 456.072 and 458.331.

(e) ~~(c)~~ As a condition of registration, each office must establish financial responsibility by demonstrating that it has met and continues to maintain, at a minimum, the same requirements applicable to physicians in ss. 458.320 and 459.0085. Each physician practicing at an office registered under this section or s. 459.0138 must meet the financial

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responsibility requirements under s. 458.320 or s. 459.0085, as applicable.

(f) ~~(d)~~ Each physician practicing or intending to practice at an office registered under this section or s. 459.0138 must ~~shall~~ advise the board, in writing, within 10 calendar days before ~~after~~ beginning or after ending his or her practice at a registered office, as applicable.

(g) ~~(e)1.~~ The department shall inspect a registered office at least annually, including a review of patient records, anesthesia logs, surgery logs, and liposuction logs to ensure that the office is in compliance with this section and rules adopted hereunder unless the office is accredited in office-based surgery by the Joint Commission or other ~~a~~ nationally recognized accrediting agency approved by the board. The inspection may be unannounced, except for the inspection of an office that meets the description of a clinic specified in s. 458.3265(1)(a)3.h., and those wholly owned and operated physician offices described in s. 458.3265(1)(a)3.g. which perform procedures referenced in s. 458.3265(1)(a)3.h., which must be announced.

(h) ~~2.~~ The department must immediately suspend the registration of a registered office that refuses an inspection under paragraph (g) ~~subparagraph 1~~. The office must close during such suspension. The suspension must remain in effect for at least 14 consecutive days and may not terminate until the department issues a written declaration that the office may reopen following the department's completion of an inspection of the office.

(i) ~~(f)~~ The department may suspend or revoke the

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registration of an office in which a procedure or surgery identified in paragraph (a) is performed for failure of any of its physicians, owners, or operators to comply with this section and rules adopted hereunder or s. 459.0138 and rules adopted thereunder. If an office's registration is revoked for any reason, the department may deny any person named in the registration documents of the office, including the persons who own or operate the office, individually or as part of a group, from registering an office to perform procedures or office surgeries pursuant to this section or s. 459.0138 for 5 years after the revocation date.

(j) ~~(g)~~ The department may impose any penalty set forth in s. 456.072(2) against the designated physician for failure of the office to operate in compliance with the office health and safety requirements of this section and rules adopted hereunder or s. 459.0138 and rules adopted thereunder.

~~(h) A physician may only perform a procedure or surgery identified in paragraph (a) in an office that is registered with the department. The board shall impose a fine of $5,000 per day on a physician who performs a procedure or surgery in an office that is not registered with the department.~~

(k) ~~(i)~~ The actual costs of registration and inspection or accreditation must ~~shall~~ be paid by the person seeking to register and operate the office in which a procedure or surgery identified in paragraph (a) will be performed.

(2) REGISTRATION UPDATE.—

(a) An office that registered under this section before July 1, 2024, in which a physician performs liposuction procedures that include a patient being rotated between the

supine, lateral, and prone positions during the procedure or in which a physician performs gluteal fat grafting procedures must provide a registration update to the department consistent with the requirements of the initial registration under subsection (1) no later than 30 days before the office surgery's next annual inspection.

(b) Registration update inspections required under subsection (1) must be performed by the department on the date of the office surgery's next annual inspection.

(c) During the registration update process, the office surgery may continue to operate under the original registration.

(d) In order to provide an office surgery time to update to the requirements of subsection (1) and s. 458.3281, effective July 1, 2024, and the applicable provisions of s. 469 of the Florida Building Code, relating to office surgery suites, any office surgery registered under this section before July 1, 2024, whose annual inspection is due in July or August 2024, may request from the department, in writing, a 60-day postponement of the required annual inspection, which postponement must be granted.

(e) All other requests to the department for a postponement of the registration update inspection required under this registration update process must be in writing and be approved by the chair of the Board of Medicine for good cause shown, and such postponement may not exceed 30 days.

(3) STANDARDS OF PRACTICE.—

(a) A physician performing a procedure or surgery in an office registered under this section must comply with the applicable provisions of s. 469 of the Florida Building Code,


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relating to office surgery suites, and the standards of practice for office surgery set forth in this section and s. 458.3281, as applicable, and any applicable rules adopted thereunder.

(b) A physician may not perform any surgery or procedure identified in paragraph (1)(a) in a setting other than an office registered under this section or a facility licensed under chapter 390 or chapter 395, as applicable. The board shall impose a fine of $5,000 per incident on a physician who violates this paragraph ~~performing a gluteal fat grafting procedure in an office surgery setting shall adhere to standards of practice pursuant to this subsection and rules adopted by the board~~.

(c) ~~(b)~~ Office surgeries may not:

1. Be a type of surgery that generally results in blood loss of more than 10 percent of estimated blood volume in a patient with a normal hemoglobin level;

2. Require major or prolonged intracranial, intrathoracic, abdominal, or joint replacement procedures, except for laparoscopic procedures;

3. Involve major blood vessels and be performed with direct visualization by open exposure of the major blood vessel, except for percutaneous endovascular intervention; or

4. Be emergent or life threatening.

(d) ~~(c)~~ A physician performing a gluteal fat grafting procedure in an office surgery setting must comply with the applicable provisions of s. 469 of the Florida Building Code, relating to office surgery suites, and the standards of practice under this subsection and s. 458.3281, and applicable rules adopted thereunder, including, but not limited to, all of the following standards of practice:

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1. The ~~A~~ physician performing the ~~a~~ gluteal fat grafting procedure must conduct an in-person examination of the patient while physically present in the same room as the patient no later than the day before the procedure.

2. Before a physician may delegate any duties during a gluteal fat grafting procedure, the patient must provide written, informed consent for such delegation. Any duty delegated by a physician during a gluteal fat grafting procedure must be performed under the direct supervision of the physician performing such procedure. Fat extraction and gluteal fat injections must be performed by the physician and may not be delegated.

3. Fat may only be injected into the subcutaneous space of the patient and may not cross the fascia overlying the gluteal muscle. Intramuscular or submuscular fat injections are prohibited.

4. When the physician performing a gluteal fat grafting procedure injects fat into the subcutaneous space of the patient, the physician must use ultrasound guidance, or guidance with other technology authorized under board rule which equals or exceeds the quality of ultrasound, during the placement and navigation of the cannula to ensure that the fat is injected into the subcutaneous space of the patient above the fascia overlying the gluteal muscle. Such guidance with the use of ultrasound or other technology is not required for other portions of such procedure.

5. An office in which a physician performs gluteal fat grafting procedures shall at all times maintain a ratio of one physician to one patient during all phases of the procedure,

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beginning with the administration of anesthesia to the patient and concluding with the extubation of the patient. After a physician has commenced, and while he or she is engaged in, a gluteal fat grafting procedure, the physician may not commence or engage in another gluteal fat grafting procedure or any other procedure with another patient at the same time.

(e) ~~(d)~~ If a procedure in an office surgery setting results in hospitalization, the incident must be reported as an adverse incident pursuant to s. 458.351.

~~(e) An office in which a physician performs gluteal fat grafting procedures must at all times maintain a ratio of one physician to one patient during all phases of the procedure, beginning with the administration of anesthesia to the patient and concluding with the extubation of the patient. After a physician has commenced, and while he or she is engaged in, a gluteal fat grafting procedure, the physician may not commence or engage in another gluteal fat grafting procedure or any other procedure with another patient at the same time.~~

(4) ~~(3)~~ RULEMAKING.—

(a) The board may ~~shall~~ adopt by rule additional standards of practice for physicians who perform office procedures or ~~office~~ surgeries under ~~pursuant to~~ this section, as warranted for patient safety and by the evolution of technology and medical practice.

(b) The board may adopt rules to administer the registration, registration update, inspection, and safety of offices in which a physician performs office procedures or ~~office~~ surgeries under ~~pursuant to~~ this section.

Section 2. Section 458.3281, Florida Statutes, is created

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to read:

458.3281 Standard of practice for office surgery.—

(1) CONSTRUCTION.—This section does not relieve a physician performing a procedure or surgery from the responsibility of making the medical determination of whether an office is an appropriate setting in which to perform that particular procedure or surgery, taking into consideration the particular patient on which the procedure or surgery is to be performed.

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

(a) "Certified in advanced cardiac life support" means a person holds a current certification in an advanced cardiac life support course with didactic and skills components, approved by the American Heart Association, the American Safety and Health Institute, the American Red Cross, Pacific Medical Training, or the Advanced Cardiovascular Life Support (ACLS) Certification Institute.

(b) "Certified in basic life support" means a person holds a current certification in a basic life support course with didactic and skills components, approved by the American Heart Association, the American Safety and Health Institute, the American Red Cross, Pacific Medical Training, or the ACLS Certification Institute.

(c) "Certified in pediatric advanced life support" means a person holds a current certification in a pediatric advanced life support course with didactic and skills components approved by the American Heart Association, the American Safety and Health Institute, or Pacific Medical Training.

(d) "Continual monitoring" means monitoring that is repeated regularly and frequently in steady, rapid succession.

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(e) "Continuous monitoring" means monitoring that is prolonged without any interruption at any time.

(f) "Equipment" means a medical device, instrument, or tool used to perform specific actions or take certain measurements during, or while a patient is recovering from, a procedure or surgery which must meet current performance standards according to its manufacturer's guidelines for the specific device, instrument, or tool, as applicable.

(g) "Major blood vessels" means a group of critical arteries and veins, including the aorta, coronary arteries, pulmonary arteries, superior and inferior vena cava, pulmonary veins, and any intra-cerebral artery or vein.

(h) "Office surgery" means a physician's office in which surgical procedures are performed by a physician for the practice of medicine as authorized by this section and board rule. The office must be an office at which a physician regularly performs consultations with surgical patients, preoperative examinations, and postoperative care, as necessitated by the standard of care related to the surgeries performed at the physician's office, and at which patient records are readily maintained and available. The types of procedures or surgeries performed in an office surgery are those which need not be performed in a facility licensed under chapter 390 or chapter 395, and are not of the type that:

1. Generally result in blood loss of more than 10 percent of estimated blood volume in a patient with a normal hemoglobin count;

2. Require major or prolonged intracranial, intrathoracic, abdominal, or major joint replacement procedures, except for

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laparoscopic procedures;

3. Involve major blood vessels and are performed with direct visualization by open exposure of the major vessel, except for percutaneous endovascular intervention; or

4. Are generally emergent or life threatening in nature.

(i) "Pediatric patient" means a patient who is 13 years of age or younger.

(j) "Percutaneous endovascular intervention" means a procedure performed without open direct visualization of the target vessel, and requires only needle puncture of an artery or vein followed by insertion of catheters, wires, or similar devices that are then advanced through the blood vessels using imaging guidance. Once the catheter reaches the intended location, various maneuvers to address the diseased area may be performed, including, but not limited to, injection of contrast medium for imaging; treatment of vessels with angioplasty; atherectomy; covered or uncovered stenting; embolization or intentionally occluding vessels or organs; and delivering medications or radiation or other energy, such as laser, radiofrequency, or cryo.

(k) "Reasonable proximity" means a distance that does not exceed 30 minutes of transport time to the hospital.

(l) "Surgery" means any manual or operative procedure performed upon the body of a living human being, including, but not limited to, those performed with the use of lasers, for the purposes of preserving health, diagnosing or curing disease, repairing injury, correcting a deformity or defect, prolonging life, relieving suffering, or any elective procedure for aesthetic, reconstructive, or cosmetic purposes. The term

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includes, but is not limited to, incision or curettage of tissue or an organ; suture or other repair of tissue or an organ, including a closed as well as an open reduction of a fracture; extraction of tissue, including premature extraction of the products of conception from the uterus; insertion of natural or artificial implants; or an endoscopic procedure with use of local or general anesthetic.

(3) GENERAL REQUIREMENTS FOR OFFICE SURGERY.—

(a) The physician performing the surgery must examine the patient immediately before the surgery to evaluate the risk of anesthesia and of the surgical procedure to be performed. The physician performing the surgery may delegate the preoperative heart and lung evaluation to a qualified anesthesia provider within the scope of the provider's practice and, if applicable, protocol.

(b) The physician performing the surgery shall maintain complete patient records of each surgical procedure performed, which must include all of the following:

1. The patient's name, patient number, preoperative diagnosis, postoperative diagnosis, surgical procedure, anesthetic, anesthesia records, recovery records, and complications, if any.

2. The name of each member of the surgical team, including the surgeon, first assistant, anesthesiologist, nurse anesthetist, anesthesiologist assistant, circulating nurse, and operating room technician, as applicable.

(c) Each office surgery's designated physician shall ensure that the office surgery has procedures in place to verify that all of the following have occurred before any surgery is

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performed:

1. The patient has signed the informed consent form for the procedure reflecting the patient's knowledge of identified risks of the procedure, consent to the procedure, the type of anesthesia and anesthesia provider to be used during the procedure, and the fact that the patient may choose the type of anesthesia provider for the procedure, such as an anesthesiologist, a certified registered nurse anesthetist, a physician assistant, an anesthesiologist assistant, or another appropriately trained physician as provided by board rule.

2. The patient's identity has been verified.

3. The operative site has been verified.

4. The operative procedure to be performed has been verified with the patient.

5. All of the information and actions required to be verified under this paragraph are documented in the patient's medical record.

(d) With respect to the requirements set forth in paragraph (c), written informed consent is not necessary for minor Level I procedures limited to the skin and mucosa.

(e) The physician performing the surgery shall maintain a log of all liposuction procedures performed at the office surgery where more than 1,000 cubic centimeters of supernatant fat is temporarily or permanently removed and where Level II and Level III surgical procedures are performed. The log must, at a minimum, include all of the following:

1. A confidential patient identifier.

2. Time of arrival in the operating suite.

3. The name of the physician performing the procedure.

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4. The patient's diagnosis, CPT codes used for the procedure, the patient's classification for risk with anesthesia according to the American Society of Anesthesiologists' physical status classification system, and the type of procedure and level of surgery performed.

5. Documentation of completion of the medical clearance performed by the anesthesiologist or the physician performing the surgery.

6. The name and provider type of the anesthesia provider and the type of anesthesia used.

7. The duration of the procedure.

8. Any adverse incidents as identified in s. 458.351.

9. The type of postoperative care, duration of recovery, disposition of the patient upon discharge, including the address of where the patient is being discharged, discharge instructions, and list of medications used during surgery and recovery.

All surgical and anesthesia logs must be kept at the office surgery and maintained for 6 years after the date of last patient contact and must be provided to department investigators upon request.

(f) For any liposuction procedure, the physician performing the surgery is responsible for determining the appropriate amount of supernatant fat to be removed from a particular patient. A maximum of 4,000 cubic centimeters of supernatant fat may be removed by liposuction in the office surgery setting. A maximum of 50mg/kg of lidocaine may be injected for tumescent liposuction in the office surgery setting.


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(g)1. Liposuction may be performed in combination with another separate surgical procedure during a single Level II or Level III operation, only in the following circumstances:

a. When combined with an abdominoplasty, liposuction may not exceed 1,000 cubic centimeters of supernatant fat.

b. When liposuction is associated and directly related to another procedure, the liposuction may not exceed 1,000 cubic centimeters of supernatant fat.

2. Major liposuction in excess of 1,000 cubic centimeters of supernatant fat may not be performed on a patient's body in a location that is remote from the site of another procedure being performed on that patient.

(h) For elective cosmetic and plastic surgery procedures performed in a physician's office, the maximum planned duration of all surgical procedures combined may not exceed 8 hours. Except for elective cosmetic and plastic surgery, the physician performing the surgery may not keep patients past midnight in a physician's office. For elective cosmetic and plastic surgical procedures, the patient must be discharged within 24 hours after presenting to the office for surgery. However, an overnight stay is allowed in the office if the total time the patient is at the office does not exceed 23 hours and 59 minutes, including the surgery time. An overnight stay in a physician's office for elective cosmetic and plastic surgery must be strictly limited to the physician's office. If the patient has not recovered sufficiently to be safely discharged within the timeframes set forth, the patient must be transferred to a hospital for continued postoperative care.

(i) The Standards of the American Society of


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Anesthesiologists for Basic Anesthetic Monitoring are hereby adopted and incorporated by reference as the standards for anesthetic monitoring by any qualified anesthesia provider under this section.

1. These standards apply to general anesthetics, regional anesthetics, and monitored Level II and III anesthesia care. However, in emergency circumstances, appropriate life support measures take priority. These standards may be exceeded at any time based on the judgment of the responsible supervising physician or anesthesiologist. While these standards are intended to encourage quality patient care, observing them does not guarantee any specific patient outcome. This set of standards addresses only the issue of basic anesthesia monitoring, which is only one component of anesthesia care.

2. In certain rare or unusual circumstances, some of these methods of monitoring may be clinically impractical, and appropriate use of the described monitoring methods may fail to detect adverse clinical developments. In such cases, a brief interruption of continual monitoring may be unavoidable and does not by itself constitute a violation of the standards of practice of this section.

3. Under extenuating circumstances, the physician performing the surgery or the anesthesiologist may waive the following requirements:

a. The use of an oxygen analyzer with a low oxygen concentration limit alarm, or other technology authorized under board rule which equals or exceeds the quality of the oxygen analyzer, during the administration of general anesthesia with an anesthesia machine.

b. The use of pulse oximetry with a variable pitch pulse tone and an audible low threshold alarm, or other technology authorized under board rule which equals or exceeds the quality of a pulse oximeter, and the use of adequate illumination and exposure of the patient to assess color.

c. The use of capnography, capnometry, or mass spectroscopy, or other technology authorized under board rule which equals or exceeds the quality of capnography, capnometry, or mass spectroscopy as a quantitative method of analyzing the end-tidal carbon dioxide for continual monitoring for the presence of expired carbon dioxide during ventilation, from the time of the endotracheal tube or supraglottic airway placement until extubation or removal or initiating transfer of the patient to a postoperative care location.

d. The use of continuous electrocardiogram display, or other technology authorized under board rule which equals or exceeds the quality of electrocardiogram display, from the beginning of anesthesia until preparing to leave the anesthetizing location.

e. The measuring of arterial blood pressure and heart rate evaluated at least every 5 minutes during anesthesia.

When any of the monitoring is waived for extenuating circumstances under this subparagraph, it must be documented in a note in the patient’s medical record, including the reasons for the need to waive the requirement. These standards are not intended for the application to the care of an obstetrical patient in labor or in the conduct of pain management.

(j)1. Because of the rapid changes in patient status during

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anesthesia, qualified anesthesia personnel must be continuously present in the room to provide anesthesia care for the entire duration of all general anesthetics, regional anesthetics, and monitored anesthesia care conducted on the patient. In the event that there is a direct known hazard, such as radiation, to the anesthesia personnel which might require intermittent remote observation of the patient, some provision for monitoring the patient must be made. In the event that an emergency requires the temporary absence of the person primarily responsible for the anesthesia, the best judgment of the supervising physician or anesthesiologist shall be exercised in comparing the emergency with the anesthetized patient's condition and in the selection of the person left responsible for the anesthesia during the temporary absence.

2. During all anesthesia, the patient's oxygenation, ventilation, circulation, and temperature must be continually evaluated to ensure adequate oxygen concentration in the inspired gas and the blood.

a. During all general anesthesia using an anesthesia machine, the concentration of oxygen in the patient's breathing system must be measured by an oxygen analyzer with a low oxygen concentration limit alarm used to measure blood oxygenation.

b. During all anesthesia, a quantitative method of assessing oxygenation, such as pulse oximetry, must be employed. When a pulse oximeter is used, the variable pitch pulse tone and the low threshold alarm must be audible to the qualified anesthesia provider. Adequate illumination and exposure of the patient are necessary to assess color.

c. During all anesthesia, every patient must have the

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adequacy of his or her ventilation continually evaluated, including, but not limited to, the evaluation of qualitative clinical signs, such as chest excursion, observation of the reservoir breathing bag, and auscultation of breath sounds. Continual monitoring for the presence of expired carbon dioxide must be performed unless invalidated by the nature of the patient's condition, the procedure, or the equipment. Quantitative monitoring of the volume of expired gas must also be performed.

d. When an endotracheal tube or supraglottic airway is inserted, its correct positioning must be verified by clinical assessment and by identification of carbon dioxide in the expired gas. Continual end-tidal carbon dioxide analysis, in use from the time of endotracheal tube or supraglottic airway placement until extubation or removal or initiating transfer of the patient to a postoperative care location, must be performed using a quantitative method, such as capnography, capnometry, or mass spectroscopy, or other technology authorized under board rule which equals or exceeds the quality of capnography, capnometry, or mass spectroscopy. When capnography or capnometry is used, the end-tidal carbon dioxide alarm must be audible to the qualified anesthesia provider.

e. When ventilation is controlled by a mechanical ventilator, there must be in continuous use a device capable of detecting disconnection of components of the breathing system. The device must give an audible signal when its alarm threshold is exceeded.

f. During regional anesthesia without sedation or local anesthesia with no sedation, the adequacy of ventilation must be

evaluated by continual observation of qualitative clinical signs. During moderate or deep sedation, the adequacy of ventilation must be evaluated by continual observation of qualitative clinical signs. Monitoring for the presence of exhaled carbon dioxide is recommended.

g. Every patient receiving anesthesia must have the electrocardiogram or other technology authorized under board rule which equals or exceeds the quality of electrocardiogram continuously displayed from the beginning of anesthesia until preparing to leave the anesthetizing location.

h. Every patient receiving anesthesia must have arterial blood pressure and heart rate determined and evaluated at least every 5 minutes.

i. Every patient receiving general anesthesia must have circulatory function continually evaluated by at least one of the following methods:

(I) Palpation of a pulse.

(II) Auscultation of heart sounds.

(III) Monitoring of a tracing of intra-arterial pressure.

(IV) Ultrasound peripheral pulse monitoring.

(V) Pulse plethysmography or oximetry.

(VI) Other technology authorized under board rule which equals or exceeds the quality of any of the methods listed in sub-sub-subparagraphs (I)-(V).

j. Every patient receiving anesthesia must have his or her temperature monitored when clinically significant changes in body temperature are intended, anticipated, or suspected.

(k)1. The physician performing the surgery shall ensure that the postoperative care arrangements made for the patient

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are adequate for the procedure being performed, as required by board rule.

2. Management of postoperative care is the responsibility of the physician performing the surgery and may be delegated as determined by board rule. If the physician performing the surgery is unavailable to provide postoperative care, the physician performing the surgery must notify the patient of his or her unavailability for postoperative care before the procedure.

3. If there is an overnight stay at the office in relation to any surgical procedure:

a. The office must provide at least two persons to act as monitors, one of whom must be certified in advanced cardiac life support, and maintain a monitor-to-patient ratio of at least one monitor to two patients.

b. Once the physician performing the surgery has signed a timed and dated discharge order, the office may provide only one monitor to monitor the patient. The monitor must be qualified by licensure and training to administer all of the medications required on the crash cart and must be certified in advanced cardiac life support.

c. A complete and current crash cart must be present in the office surgery and immediately accessible for the monitors.

4. The physician performing the surgery must be reachable by telephone and readily available to return to the office if needed.

5. A policy and procedures manual must be maintained in the office at which Level II and Level III procedures are performed. The manual must be updated and implemented annually. The policy

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and procedures manual must provide for all of the following:

a. Duties and responsibilities of all personnel.

b. A quality assessment and improvement system designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care and opportunities to improve performance.

c. Cleaning procedures and protocols.

d. Sterilization procedures.

e. Infection control procedures and personnel responsibilities.

f. Emergency procedures.

6. The designated physician shall establish a risk management program that includes all of the following components:

a. The identification, investigation, and analysis of the frequency and causes of adverse incidents.

b. The identification of trends or patterns of adverse incidents.

c. The development of appropriate measures to correct, reduce, minimize, or eliminate the risk of adverse incidents.

d. The documentation of such functions and periodic review of such information at least quarterly by the designated physician.

7. The designated physician shall report to the department any adverse incidents that occur within the scope of office surgeries. This report must be made within 15 days after the occurrence of an incident as required by s. 458.351.

8. The designated physician is responsible for prominently posting a sign in the office which states that the office is a


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doctor's office regulated under this section and ss. 458.328, 458.3281, and 459.0138 and the applicable rules of the Board of Medicine and the Board of Osteopathic Medicine as set forth in rules 64B8 and 64B15, Florida Administrative Code. This notice must also appear prominently within the required patient informed consent form.

9. All physicians performing surgery at the office surgery must be qualified by education, training, and experience to perform any procedure the physician performs in the office surgery.

10. When Level II, Level II-A, or Level III procedures are performed in an office surgery setting, the physician performing the surgery is responsible for providing the patient, in writing, before the procedure, with the name and location of the hospital where the physician performing the surgery has privileges to perform the same procedure as the one being performed in the office surgery setting, and the name and location of the hospital with which the physician performing the surgery has a transfer agreement in the event of an emergency.

(4) LEVEL I OFFICE SURGERY.—

(a) *Scope.*—Level I office surgery includes the following:

1. Minor procedures such as excision of skin lesions, moles, warts, cysts, or lipomas and repair of lacerations or surgery limited to the skin and subcutaneous tissue which are performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient.

2. Liposuction involving the removal of less than 4,000 cubic centimeters of supernatant fat.

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3. Incision and drainage of superficial abscesses; limited endoscopies, such as proctoscopies, skin biopsies, arthrocentesis, thoracentesis, paracentesis, dilation of the urethra, cystoscopic procedures, and closed reduction of simple fractures; or small joint dislocations, such as in the finger or toe joints.

4. Procedures in which anesthesia is limited to minimal sedation. The patient's level of sedation must be that of minimal sedation and anxiolysis, and the chances of complications requiring hospitalization must be remote. As used in this sub-subparagraph, the term "minimal sedation and anxiolysis" means a drug-induced state during which patients respond normally to verbal commands, and although cognitive function and physical coordination may be impaired, airway reflexes and ventilatory and cardiovascular functions remain unaffected. Controlled substances, as defined in ss. 893.02 and 893.03, must be limited to oral administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

5. Procedures for which chances of complications requiring hospitalization are remote as specified in board rule.

(b) *Standards of practice.*—Standards of practice for Level I office surgery include all of the following:

1. The medical education, training, and experience of the physician performing the surgery must include training on proper dosages and management of toxicity or hypersensitivity to regional anesthetic drugs, and the physician must be certified in advanced cardiac life support.

2. At least one operating assistant must be certified in

basic life support.

3. Intravenous access supplies, oxygen, oral airways, and a positive pressure ventilation device must be available in the office surgery, along with the following medications, stored per the manufacturer's recommendation:

a. Atropine, 3 mg.

b. Diphenhydramine, 50 mg.

c. Epinephrine, 1 mg in 10 ml.

d. Epinephrine, 1 mg in 1 ml vial, 3 vials total.

e. Hydrocortisone, 100 mg.

f. If a benzodiazepine is administered, flumazenil, 0.5 mg in 5 ml vial, 2 vials total.

g. If an opiate is administered, naloxone, 0.4 mg in 1 ml vial, 2 vials total.

4. When performing minor procedures, such as excision of skin lesions, moles, warts, cysts, or lipomas and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia in an office surgery setting, physicians performing the procedure are exempt from subparagraphs 1.-3. Current certification in basic life support is recommended but not required.

5. A physician performing the surgery need not have an assistant during the procedure unless the specific procedure being performed requires an assistant.

(5) LEVEL II OFFICE SURGERY.—

(a) *Scope.*—Level II office surgery includes, but is not limited to, all of the following procedures:

1. Hemorrhoidectomy.

2. Hernia repair.

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3. Large joint dislocations.

4. Colonoscopy.

5. Liposuction involving the removal of up to 4,000 cubic centimeters of supernatant fat.

6. Any other procedure the board designates by rule as a Level II office surgery.

7. Surgeries in which the patient's level of sedation is that of moderate sedation and analgesia or conscious sedation. As used in this subparagraph, the term "moderate sedation and analgesia or conscious sedation" is a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation; interventions are not required to maintain a patent airway; spontaneous ventilation is adequate; and cardiovascular function is maintained. For purposes of this term, a patient reflexively withdrawing from a painful stimulus is not considered a purposeful response.

(b) *Standards of practice.*—Standards of practice for Level II office surgery include, but are not limited to, the following:

1. The physician performing the surgery, or the office where the procedure is being performed, must have a transfer agreement with a licensed hospital within reasonable proximity if the physician performing the procedure does not have staff privileges to perform the same procedure as that being performed in the office surgery setting at a licensed hospital within reasonable proximity. The transfer agreement required by this section must be current and have been entered into no more than 3 years before the date of the office's most recent annual

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inspection under s. 458.328. A transfer agreement must affirmatively disclose an effective date and a termination date.

2. The physician performing the surgery must have staff privileges at a licensed hospital to perform the same procedure in that hospital as that being performed in the office surgery setting or must be able to document satisfactory completion of training, such as board certification or board eligibility by a board approved by the American Board of Medical Specialties or any other board approved by the Board of Medicine, or must be able to establish comparable background, training, and experience. Such board certification or comparable background, training, and experience must also be directly related to and include the procedures being performed by the physician in the office surgery facility.

3. One assistant must be currently certified in basic life support.

4. The physician performing the surgery must be currently certified in advanced cardiac life support.

5. A complete and current crash cart must be available at all times at the location where the anesthesia is being administered. The designated physician of an office surgery is responsible for ensuring that the crash cart is replenished after each use, the expiration dates for the crash cart’s medications are checked weekly, and crash cart events are documented in the cart’s logs. Medicines must be stored per the manufacturer’s recommendations, and multi-dose vials must be dated once opened and checked daily for expiration. The crash cart must, at a minimum, include the following intravenous or inhaled medications:


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a. Adenosine, 18 mg.
b. Albuterol, 2.5 mg with a small volume nebulizer.
c. Amiodarone, 300 mg.
d. Atropine, 3 mg.
e. Calcium chloride, 1 gram.
f. Dextrose, 50 percent; 50 ml.
g. Diphenhydramine, 50 mg.
h. Dopamine, 200 mg, minimum.
i. Epinephrine, 1 mg, in 10 ml.
j. Epinephrine, 1 mg in 1 ml vial, 3 vials total.
k. Flumazenil, 1 mg.
l. Furosemide, 40 mg.
m. Hydrocortisone, 100 mg.
n. Lidocaine appropriate for cardiac administration, 100 mg.
o. Magnesium sulfate, 2 grams.
p. Naloxone, 1.2 mg.
q. A beta blocker class drug.
r. Sodium bicarbonate, 50 mEq/50 ml.
s. Paralytic agent that is appropriate for use in rapid sequence intubation.
t. A calcium channel blocker class drug.
u. If nonneuraxial regional blocks are performed, Intralipid, 20 percent, 500 ml solution.
v. Any additional medication the board determines by rule is warranted for patient safety and by the evolution of technology and medical practice.

6. In the event of a drug shortage, the designated physician is authorized to substitute a therapeutically

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equivalent drug that meets the prevailing practice standards.

7. The designated physician is responsible for ensuring that the office maintains documentation of its unsuccessful efforts to obtain the required drug.

8. The designated physician is responsible for ensuring that the following are present in the office surgery:

a. A benzodiazepine.

b. A positive pressure ventilation device, such as Ambu, plus oxygen supply.

c. An end-tidal carbon dioxide detection device.

d. Monitors for blood pressure, electrocardiography, and oxygen saturation.

e. Emergency intubation equipment that must, at a minimum, include suction devices, endotracheal tubes, working laryngoscopes, oropharyngeal airways, nasopharyngeal airways, and bag valve mask apparatus that are sized appropriately for the specific patient.

f. A working defibrillator with defibrillator pads or defibrillator gel, or an automated external defibrillator unit.

g. Sufficient backup power to allow the physician performing the surgery to safely terminate the procedure and to allow the patient to emerge from the anesthetic, all without compromising the sterility of the procedure or the environment of care.

h. Working sterilization equipment cultured weekly.

i. Sufficient intravenous solutions and equipment for a minimum of a week’s worth of surgical cases.

j. Any other equipment required by board rule, as warranted by the evolution of technology and medical practice.

9. The physician performing the surgery must be assisted by a qualified anesthesia provider, which may include any of the following types of providers:

a. An anesthesiologist.

b. A certified registered nurse anesthetist.

c. A registered nurse, if the physician performing the surgery is certified in advanced cardiac life support and the registered nurse assists only with local anesthesia or conscious sedation.

An anesthesiologist assistant may assist the anesthesiologist as provided by board rule. An assisting anesthesia provider may not function in any other capacity during the procedure.

10. If additional anesthesia assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, osteopathic physician, registered nurse, licensed practical nurse, or operating room technician.

11. The designated physician is responsible for ensuring that each patient is monitored in the recovery room until the patient is fully recovered from anesthesia. Such monitoring must be provided by a licensed physician, physician assistant, registered nurse with postanesthesia care unit experience, or the equivalent who is currently certified in advanced cardiac life support, or, in the case of pediatric patients, currently certified in pediatric advanced life support.

(6) LEVEL II-A OFFICE SURGERY.—

(a) *Scope*.—Level II-A office surgeries are those Level II office surgeries that have a maximum planned duration of 5

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minutes or less and in which the chances of complications requiring hospitalization are remote.

(b) *Standards of practice.*—

1. All practice standards for Level II office surgery set forth in paragraph (5)(b) must be met for Level II-A office surgery except for the requirements set forth in subparagraph (5)(b)9. regarding assistance by a qualified anesthesia provider.

2. During the surgical procedure, the physician performing the surgery must be assisted by a licensed physician, physician assistant, registered nurse, or licensed practical nurse.

3. Additional assistance may be required by specific procedure or patient circumstances.

4. Following the procedure, a licensed physician, physician assistant, or registered nurse must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia. The monitoring provider must be currently certified in advanced cardiac life support, or, in the case of pediatric patients, currently certified in pediatric advanced life support.

(7) LEVEL III OFFICE SURGERY.—

(a) *Scope.*—

1. Level III office surgery includes those types of surgery during which the patient's level of sedation is that of deep sedation and analgesia or general anesthesia. As used in this subparagraph, the term:

a. "Deep sedation and analgesia" means a drug-induced depression of consciousness during which:

(I) Patients cannot be easily aroused but respond

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purposefully following repeated or painful stimulation;

(II) The ability to independently maintain ventilatory function may be impaired;

(III) Patients may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate; and

(IV) Cardiovascular function is usually maintained.

For purposes of this sub-subparagraph, a reflexive withdrawal from a painful stimulus by a patient is not considered a purposeful response.

b. "General anesthesia" means a drug-induced loss of consciousness during which:

(I) Patients are not arousable, even by painful stimulation;

(II) The ability to independently maintain ventilatory function is often impaired;

(III) Patients often require assistance in maintaining a patent airway and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function; and

(IV) Cardiovascular function may be impaired.

2. The use of spinal or epidural anesthesia for a procedure requires that the procedure be considered a Level III office surgery.

3. Only patients classified under the American Society of Anesthesiologists' (ASA) risk classification criteria as Class I or Class II are appropriate candidates for a Level III office surgery.

a. All Level III office surgeries on patients classified as


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ASA III or higher must be performed only in a hospital or ambulatory surgical center.

b. For all ASA II patients above the age of 50, the physician performing the surgery must obtain a complete workup performed before the performance of a Level III office surgery in the office surgery setting.

c. If the patient has a cardiac history or is deemed to be a complicated medical patient, the patient must have a preoperative electrocardiogram and be referred to an appropriate consultant for medical optimization. The referral to a consultant may be waived after evaluation by the patient's anesthesiologist.

(b) *Standards of practice.*—Practice standards for Level III office surgery include all Level II office surgery standards and all of the following requirements:

1. The physician performing the surgery must have staff privileges at a licensed hospital to perform the same procedure in that hospital as that being performed in the office surgery setting or must be able to document satisfactory completion of training, such as board certification or board qualification by a board approved by the American Board of Medical Specialties or any other board approved by the Board of Medicine, or must be able to demonstrate to the accrediting organization or to the department comparable background, training, and experience. Such board certification or comparable background, training, and experience must also be directly related to and include the procedure being performed by the physician performing the surgery in the office surgery setting. In addition, the physician performing the surgery must have knowledge of the

principles of general anesthesia.

2. The physician performing the surgery must be currently certified in advanced cardiac life support.

3. At least one operating assistant must be currently certified in basic life support.

4. An emergency policy and procedures manual related to serious anesthesia complications must be available in the office surgery and reviewed biannually by the designated physician, practiced with staff, updated, and posted in a conspicuous location in the office. Topics to be covered in the manual must include all of the following:

a. Airway blockage and foreign body obstruction.

b. Allergic reactions.

c. Bradycardia.

d. Bronchospasm.

e. Cardiac arrest.

f. Chest pain.

g. Hypoglycemia.

h. Hypotension.

i. Hypoventilation.

j. Laryngospasm.

k. Local anesthetic toxicity reaction.

l. Malignant hyperthermia.

m. Any other topics the board determines by rule are warranted for patient safety and by the evolution of technology and medical practice.

5. An office surgery performing Level III office surgeries must maintain all of the equipment and medications required for Level II office surgeries and comply with all of the following


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additional requirements:

a. Maintain at least 720 mg of dantrolene on site if halogenated anesthetics or succinylcholine are used.

b. Equipment and medication for monitored postanesthesia recovery must be available in the office.

6. Anesthetic safety regulations must be developed, posted in a conspicuous location in the office, and enforced by the designated physician. Such regulations must include all of the following requirements:

a. All operating room electrical and anesthesia equipment must be inspected at least semiannually, and a written record of the results and corrective actions must be maintained.

b. Flammable anesthetic agents may not be employed in office surgery facilities.

c. Electrical equipment in anesthetizing areas must be on an audiovisual line isolation monitor, with the exception of radiologic equipment and fixed lighting more than 5 feet above the floor.

d. Each anesthesia gas machine must have a pin-index system or equivalent safety system and a minimum oxygen flow safety device.

e. All reusable anesthesia equipment in direct contact with a patient must be cleaned or sterilized as appropriate after each use.

f. The following monitors must be applied to all patients receiving conduction or general anesthesia:

(I) Blood pressure cuff.

(II) A continuous temperature device, readily available to measure the patient’s temperature.

(III) Pulse oximeter.

(IV) Electrocardiogram.

(V) An inspired oxygen concentration monitor and a capnograph, for patients receiving general anesthesia.

g. Emergency intubation equipment must be available in all office surgery suites.

h. Surgical tables must be capable of Trendelenburg and other positions necessary to facilitate surgical procedures.

i. An anesthesiologist, a certified registered nurse anesthetist, an anesthesiologist assistant, or a physician assistant qualified as set forth in board rule must administer the general or regional anesthesia.

j. A physician, a registered nurse, a licensed practical nurse, a physician assistant, or an operating room technician must assist with the surgery. The anesthesia provider may not function in any other capacity during the procedure.

k. The patient must be monitored in the recovery room until he or she has fully recovered from anesthesia. The monitoring must be provided by a physician, a physician assistant, a certified registered nurse anesthetist, an anesthesiologist assistant, or a registered nurse with postanesthesia care unit experience or the equivalent who is currently certified in advanced cardiac life support, or, in the case of pediatric patients, currently certified in pediatric advanced life support.

(8) RULEMAKING.—The board may adopt by rule additional standards of practice for physicians who perform office surgeries or procedures under this section as warranted for patient safety and by the evolution of technology and medical


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practice.

Section 3. Section 459.0138, Florida Statutes, is amended to read:

459.0138 Office surgeries.—

(1) REGISTRATION.—

(a)~~1.~~ An office in which a physician performs or intends to perform a liposuction procedure in which more than 1,000 cubic centimeters of supernatant fat is temporarily or permanently removed, a liposuction procedure during which the patient is rotated between the supine, lateral, and prone positions, a Level II office surgery, or a Level III office surgery must register with the department. ~~unless the office is licensed as~~ A facility licensed under chapter 390 or chapter 395 may not be registered under this section.

(b)~~2.~~ The department must complete an inspection of any office seeking registration under this section before the office may be registered.

1. The inspection of the office seeking registration under this section must include inspection for compliance with the standards of practice set out in this section and s. 458.3281 and any applicable board rules for the levels of office surgery and procedures listed on the application which any physician practicing at the office performs or intends to perform. The application must be updated within 10 calendar days before any additional surgical procedures or levels of office surgery are to be performed at the office. Failure to timely update the application for any such additional surgical procedures or levels of office surgery is a violation of this section and subject to discipline under ss. 456.072 and 459.015.

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2. The department must immediately suspend the registration process of an office that refuses an inspection under subparagraph 1., and the applicant must be required to reapply for registration.

3. If the department determines that an office seeking registration under this section is one in which a physician may perform, or intends to perform, liposuction procedures that include a patient being rotated between the supine, lateral, and prone positions during the procedure, or in which a physician may perform, or intends to perform, gluteal fat grafting procedures, the office must provide proof to the department that it has met the applicable requirements of s. 469 of the Florida Building Code, relating to office surgery suites, and s. 458.3281 and the applicable rules adopted thereunder, and the department must inspect the office to ensure that all of the following are present or in place:

a. Equipment and a procedure for measuring and documenting in a log the amount of supernatant fat removed, both temporarily and permanently, from a particular patient, including tissue disposal procedures.

b. A procedure for measuring and documenting the amount of lidocaine injected for tumescent liposuction, if used.

c. Working ultrasound guidance equipment or other guidance technology authorized under board rule which equals or exceeds the quality of ultrasound guidance.

d. The office procedure for obtaining blood products.

e. Documentation on file at the office demonstrating that any physician performing these procedures has privileges to perform such procedures in a hospital no more than 20 minutes

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away.

f. Procedures for emergency resuscitation and transport to a hospital.

g. Procedures for anesthesia and surgical recordkeeping.

h. Any additional inspection requirements, as set by board rule.

4. If an applicant is unable to provide proof to the department that the office seeking registration is in compliance with the applicable requirements of s. 469 of the Florida Building Code, relating to office surgery suites, or s. 459.0139 or the applicable rules adopted thereunder, in accordance with subparagraph 3., the department must notify the Agency for Health Care Administration and request the agency to inspect the office and consult with the office about the process to apply for ambulatory surgical center licensure under chapter 395 and how the office may seek qualification for such licensure, notwithstanding the office's failure to meet all requirements associated with such licensure at the time of inspection and notwithstanding any pertinent exceptions provided under s. 395.002(3).

(c) ~~(b)~~ To be ~~By January 1, 2020, each office~~ registered under this section or s. 458.328, an office must, at the time of application, list a designated ~~designate a~~ physician who is responsible for the office's compliance with the office health and safety requirements of this section and rules adopted hereunder. A designated physician must have a full, active, and unencumbered license under this chapter or chapter 458 and shall practice at the office for which he or she has assumed responsibility. Within 10 calendar days after the termination of

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a designated physician relationship, the office must notify the department of the designation of another physician to serve as the designated physician. The department may not register an office if the office fails to comply with this requirement at the time of application and must seek an emergency suspension of the ~~suspend a~~ registration of ~~for~~ an office pursuant to s. 456.074(6) if the office fails to timely notify the department of its new designated physician within 10 calendar days after the termination of the previous designated physician relationship ~~comply with the requirements of this paragraph~~.

(d) As a condition of registration, each office must, at the time of application, list all medical personnel who will be practicing at the office, including all of the following:

1. Physicians who intend to practice surgery or assist in surgery at the office seeking registration, including their respective license numbers and practice addresses.

2. Anesthesia providers, including their license numbers.

3. Nursing personnel licensed under chapter 464, including their license numbers unless already provided under subparagraph 2.

4. Physician assistants, including their respective license numbers and supervising physicians.

The office must notify the department of the addition or termination of any of the types of medical personnel specified under this paragraph within 10 calendar days before such addition or after such termination. Failure to timely notify the department of such addition or termination is a violation of this section and subject to discipline under ss. 456.072 and

459.015.

(e)~~(c)~~ As a condition of registration, each office must establish financial responsibility by demonstrating that it has met and continues to maintain, at a minimum, the same requirements applicable to physicians in ss. 458.320 and 459.0085. Each physician practicing at an office registered under this section or s. 458.328 must meet the financial responsibility requirements under s. 458.320 or s. 459.0085, as applicable.

(f)~~(d)~~ Each physician practicing or intending to practice at an office registered under this section or s. 458.328 must ~~shall~~ advise the board, in writing, within 10 calendar days before ~~after~~ beginning or after ending his or her practice at a ~~the~~ registered office, as applicable.

(g)~~(e)1.~~ The department shall inspect a registered office at least annually, including a review of patient records, to ensure that the office is in compliance with this section and rules adopted hereunder unless the office is accredited in office-based surgery by the Joint Commission or other ~~a~~ nationally recognized accrediting agency approved by the board. The inspection may be unannounced, except for the inspection of an office that meets the description of a clinic specified in s. 459.0137(1)(a)3.h., and those wholly owned and operated physician offices described in s. 459.0137(1)(a)3.g. which perform procedures referenced in s. 459.0137(1)(a)3.h., which must be announced.

(h)~~2.~~ The department must immediately suspend the registration of a registered office that refuses an inspection under paragraph (g) ~~subparagraph 1~~. The office must close during


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such suspension. The suspension must remain in effect for at least 14 consecutive days and may not terminate until the department issues a written declaration that the office may reopen following the department's completion of an inspection of the office.

(i) ~~(f)~~ The department may suspend or revoke the registration of an office in which a procedure or surgery identified in paragraph (a) is performed for failure of any of its physicians, owners, or operators to comply with this section and rules adopted hereunder or s. 458.328 and rules adopted thereunder. If an office's registration is revoked for any reason, the department may deny any person named in the registration documents of the office, including the persons who own or operate the office, individually or as part of a group, from registering an office to perform procedures or office surgeries pursuant to this section or s. 458.328 for 5 years after the revocation date.

(j) ~~(g)~~ The department may impose any penalty set forth in s. 456.072(2) against the designated physician for failure of the office to operate in compliance with the office health and safety requirements of this section and rules adopted hereunder or s. 458.328 and rules adopted thereunder.

~~(h) A physician may only perform a procedure or surgery identified in paragraph (a) in an office that is registered with the department. The board shall impose a fine of $5,000 per day on a physician who performs a procedure or surgery in an office that is not registered with the department.~~

(k) ~~(i)~~ The actual costs of registration and inspection or accreditation must ~~shall~~ be paid by the person seeking to

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register and operate the office in which a procedure or surgery identified in paragraph (a) will be performed.

(2) REGISTRATION UPDATE.—

(a) An office that registered under this section before July 1, 2024, in which a physician performs liposuction procedures that include a patient being rotated between the supine, lateral, and prone positions during the procedure or in which a physician performs gluteal fat grafting procedures must provide a registration update to the department consistent with the requirements of the initial registration under subsection (1) no later than 30 days before the office surgery's next annual inspection.

(b) Registration update inspections required under subsection (1) must be performed by the department on the date of the office surgery's next annual inspection.

(c) During the registration update process, the office surgery may continue to operate under the original registration.

(d) In order to provide an office surgery time to update to the requirements of subsection (1) and s. 459.0139, effective July 1, 2024, and the applicable provisions of s. 469 of the Florida Building Code, relating to office surgery suites, any office surgery registered under this section before July 1, 2024, whose annual inspection is due in July or August 2024, may request from the department, in writing, a 60-day postponement of the required annual inspection, which must be granted.

(e) All other requests to the department for a postponement of the required registration update inspection under this registration update process must be in writing and be approved by the chair of the Board of Medicine for good cause shown, and


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such postponement may not exceed 30 days.

(3) STANDARDS OF PRACTICE.—

(a) A physician performing a procedure or surgery in an office registered under this section must comply with the applicable provisions of s. 469 of the Florida Building Code, relating to office surgery suites, and the standards of practice for office surgery set forth in this section and s. 459.0139.

(b) A physician may not perform any surgery or procedure identified in paragraph (1)(a) in a setting other than an office registered under this section or a facility licensed under chapter 390 or chapter 395, as applicable. The board shall impose a fine of $5,000 per incident on a physician who violates this paragraph ~~performing a gluteal fat grafting procedure in an office surgery setting shall adhere to standards of practice pursuant to this subsection and rules adopted by the board~~.

(c) ~~(b)~~ Office surgeries may not:

1. Be a type of surgery that generally results in blood loss of more than 10 percent of estimated blood volume in a patient with a normal hemoglobin level;

2. Require major or prolonged intracranial, intrathoracic, abdominal, or joint replacement procedures, except for laparoscopic procedures;

3. Involve major blood vessels and be performed with direct visualization by open exposure of the major blood vessel, except for percutaneous endovascular intervention; or

4. Be emergent or life threatening.

(d) ~~(c)~~ A physician performing a gluteal fat grafting procedure in an office surgery setting must comply with the applicable provisions of s. 469 of the Florida Building Code,

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relating to office surgery suites, and the standards of practice under this subsection and s. 459.0139 and applicable rules adopted thereunder, including, but not limited to, all of the following standards of practice:

1. The ~~A~~ physician performing the ~~a~~ gluteal fat grafting procedure must conduct an in-person examination of the patient while physically present in the same room as the patient no later than the day before the procedure.

2. Before a physician may delegate any duties during a gluteal fat grafting procedure, the patient must provide written, informed consent for such delegation. Any duty delegated by a physician during a gluteal fat grafting procedure must be performed under the direct supervision of the physician performing such procedure. Fat extraction and gluteal fat injections must be performed by the physician and may not be delegated.

3. Fat may only be injected into the subcutaneous space of the patient and may not cross the fascia overlying the gluteal muscle. Intramuscular or submuscular fat injections are prohibited.

4. When the physician performing a gluteal fat grafting procedure injects fat into the subcutaneous space of the patient, the physician must use ultrasound guidance, or guidance with other technology authorized under board rule which equals or exceeds the quality of ultrasound, during the placement and navigation of the cannula to ensure that the fat is injected into the subcutaneous space of the patient above the fascia overlying the gluteal muscle. Such guidance with the use of ultrasound or other technology is not required for other


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portions of such procedure.

5. An office in which a physician performs gluteal fat grafting procedures shall at all times maintain a ratio of one physician to one patient during all phases of the procedure, beginning with the administration of anesthesia to the patient and concluding with the extubation of the patient. After a physician has commenced, and while he or she is engaged in, a gluteal fat grafting procedure, the physician may not commence or engage in another gluteal fat grafting procedure or any other procedure with another patient at the same time.

(e) ~~(d)~~ If a procedure in an office surgery setting results in hospitalization, the incident must be reported as an adverse incident pursuant to s. 458.351.

~~(e) An office in which a physician performs gluteal fat grafting procedures must at all times maintain a ratio of one physician to one patient during all phases of the procedure, beginning with the administration of anesthesia to the patient and concluding with the extubation of the patient. After a physician has commenced, and while he or she is engaged in, a gluteal fat grafting procedure, the physician may not commence or engage in another gluteal fat grafting procedure or any other procedure with another patient at the same time.~~

(4) ~~(3)~~ RULEMAKING.—

(a) The board may ~~shall~~ adopt by rule additional standards of practice for physicians who perform office procedures or ~~office~~ surgeries under ~~pursuant to~~ this section, as warranted for patient safety and by the evolution of technology and medical practice.

(b) The board may adopt rules to administer the

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registration, registration update, inspection, and safety of offices in which a physician performs office procedures or ~~office~~ surgeries under ~~pursuant to~~ this section.

Section 4. Section 459.0139, Florida Statutes, is created to read:

459.0139 Standard of practice for office surgery.—

(1) CONSTRUCTION.—This section does not relieve a physician performing a procedure or surgery from the responsibility of making the medical determination of whether an office is an appropriate setting in which to perform that particular procedure or surgery, taking into consideration the particular patient on which the procedure or surgery is to be performed.

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

(a) "Certified in advanced cardiac life support" means a person holds a current certification in an advanced cardiac life support course with didactic and skills components, approved by the American Heart Association, the American Safety and Health Institute, the American Red Cross, Pacific Medical Training, or the Advanced Cardiovascular Life Support (ACLS) Certification Institute.

(b) "Certified in basic life support" means a person holds a current certification in a basic life support course with didactic and skills components, approved by the American Heart Association, the American Safety and Health Institute, the American Red Cross, Pacific Medical Training, or the ACLS Certification Institute.

(c) "Certified in pediatric advanced life support" means a person holds a current certification in a pediatric advanced life support course with didactic and skills components approved

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by the American Heart Association, the American Safety and Health Institute, or Pacific Medical Training.

(d) "Continual monitoring" means monitoring that is repeated regularly and frequently in steady rapid succession.

(e) "Continuous monitoring" means monitoring that is prolonged without any interruption at any time.

(f) "Equipment" means a medical device, instrument, or tool used to perform specific actions, carry out desired effects, or take certain measurements during, or while recovering from, a procedure or surgery which must meet current performance standards according to its manufacturer's guidelines for the specific device, instrument, or tool, as applicable.

(g) "Major blood vessels" means a group of critical arteries and veins, including the aorta, coronary arteries, pulmonary arteries, superior and inferior vena cava, pulmonary veins, and any intra-cerebral artery or vein.

(h) "Office surgery" means a physician's office in which surgical procedures are performed by a physician for the practice of medicine as authorized by this section and board rule. The office must be an office at which a physician regularly performs consultations with surgical patients, preoperative examinations, and postoperative care, as necessitated by the standard of care, related to the procedures performed at the physician's office, and at which patient records are readily maintained and available. The types of procedures or surgeries performed in an office surgery are those which need not be performed in a facility licensed under chapter 390 or chapter 395, and are not of the type that:

1. Generally result in blood loss of more than 10 percent

of estimated blood volume in a patient with a normal hemoglobin count;

2. Require major or prolonged intracranial, intrathoracic, abdominal, or major joint replacement procedures, except for laparoscopic procedures;

3. Involve major blood vessels and are performed with direct visualization by open exposure of the major vessel, except for percutaneous endovascular intervention; or

4. Are generally emergent or life threatening in nature.

(i) "Pediatric patient" means a patient who is 13 years of age or younger.

(j) "Percutaneous endovascular intervention" means a procedure performed without open direct visualization of the target vessel and requiring only needle puncture of an artery or vein followed by insertion of catheters, wires, or similar devices which are then advanced through the blood vessels using imaging guidance. Once the catheter reaches the intended location, various maneuvers to address the diseased area may be performed, which include, but are not limited to, injection of contrast medium for imaging; treatment of vessels with angioplasty; atherectomy; covered or uncovered stenting; embolization or intentionally occluding vessels or organs; and delivering medications, radiation, or other energy, such as laser, radiofrequency, or cryo.

(k) "Reasonable proximity" means a distance that does not exceed thirty 30 minutes of transport time to the hospital.

(l) "Surgery" means any manual or operative procedure performed upon the body of a living human being, including, but not limited to, those performed with the use of lasers, for the

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purposes of preserving health, diagnosing or curing disease, repairing injury, correcting a deformity or defect, prolonging life, relieving suffering, or any elective procedure for aesthetic, reconstructive, or cosmetic purposes. The term includes, but is not limited to, incision or curettage of tissue or an organ; suture or other repair of tissue or an organ, including a closed as well as an open reduction of a fracture; extraction of tissue, including premature extraction of the products of conception from the uterus; insertion of natural or artificial implants; or an endoscopic procedure with use of local or general anesthetic.

(3) GENERAL REQUIREMENTS FOR OFFICE SURGERY.—

(a) The physician performing the operation must examine the patient immediately before the surgery to evaluate the risk of anesthesia and of the surgical procedure to be performed. The physician performing the surgery may delegate the preoperative heart-lung evaluation to a qualified anesthesia provider within the scope of the provider's practice and, if applicable, protocol.

(b) The physician performing the surgery shall maintain complete patient records of each surgical procedure performed, which must include all of the following:

1. The patient's name, patient number, preoperative diagnosis, postoperative diagnosis, surgical procedure, anesthetic, anesthesia records, recovery records, and complications, if any.

2. The name of each member of the surgical team, including the surgeon, first assistant, anesthesiologist, nurse anesthetist, anesthesiologist assistant, circulating nurse, and

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operating room technician.

(c) Each office surgery's designated physician shall ensure that the office surgery has procedures in place to verify that all of the following have occurred before any surgery is performed:

1. The patient has signed the informed consent form for the procedure reflecting the patient's knowledge of identified risks of the procedure, consent to the procedure, the type of anesthesia and anesthesia provider to be used during the procedure, and the fact that the patient may choose the type of anesthesia provider for the procedure, such as an anesthesiologist, a certified registered nurse anesthetist, a physician assistant, an anesthesiologist assistant, or another appropriately trained physician as provided by board rule.

2. The patient's identity has been verified.

3. The operative site has been verified.

4. The operative procedure to be performed has been verified with the patient.

5. All of the information and actions required to be verified under this paragraph are documented in the patient's medical record.

(d) With respect to the requirement set forth in paragraph (c), written informed consent is not necessary for minor Level I procedures limited to the skin and mucosa.

(e) The physician performing the surgery shall maintain a log of all liposuction procedures performed at the office surgery where more than 1,000 cubic centimeters of supernatant fat is temporarily or permanently removed and where Level II and Level III surgical procedures are performed. The log must, at a

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minimum, include all of the following:

1. A confidential patient identifier.

2. Time of arrival in the operating suite.

3. The name of the physician performing the procedure.

4. The patient's diagnosis, CPT codes used for the procedure, the patient's classification for risk with anesthesia according to the American Society of Anesthesiologists' physical status classification system, and the type of procedure and level of surgery performed.

5. Documentation of completion of the medical clearance performed by the anesthesiologist or the physician performing the surgery.

6. The name and provider type of the anesthesia provider and the type of anesthesia used.

7. The duration of the procedure.

8. Any adverse incidents as identified in s. 458.351.

9. The type of postoperative care, duration of recovery, disposition of the patient upon discharge, including the address of where the patient is being discharged, discharge instructions, and list of medications used during surgery and recovery.

All surgical and anesthesia logs must be kept at the office surgery and maintained for 6 years after the date of last patient contact and must be provided to department investigators upon request.

(f) For any liposuction procedure, the physician performing the surgery is responsible for determining the appropriate amount of supernatant fat to be removed from a particular

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patient. A maximum of 4,000 cubic centimeters of supernatant fat may be removed by liposuction in the office surgery setting. A maximum of 50mg/kg of lidocaine can be injected for tumescent liposuction in the office surgery setting.

(g)1. Liposuction may be performed in combination with another separate surgical procedure during a single Level II or Level III operation only in the following circumstances:

a. When combined with an abdominoplasty, liposuction may not exceed 1,000 cubic centimeters of supernatant fat.

b. When liposuction is associated and directly related to another procedure, the liposuction may not exceed 1,000 cubic centimeters of supernatant fat.

2. Major liposuction in excess of 1,000 cubic centimeters of supernatant fat may not be performed on a patient's body in a location that is remote from the site of another procedure being performed on that patient.

(h) For elective cosmetic and plastic surgery procedures performed in a physician's office, the maximum planned duration of all surgical procedures combined may not exceed 8 hours. Except for elective cosmetic and plastic surgery, the physician performing the surgery may not keep patients past midnight in a physician's office. For elective cosmetic and plastic surgical procedures, the patient must be discharged within 24 hours after presenting to the office for surgery. However, an overnight stay is allowed in the office if the total time the patient is at the office does not exceed 23 hours and 59 minutes, including the surgery time. An overnight stay in a physician's office for elective cosmetic and plastic surgery must be strictly limited to the physician's office. If the patient has not recovered

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sufficiently to be safely discharged within the timeframes set forth, the patient must be transferred to a hospital for continued postoperative care.

(i) The Standards of the American Society of Anesthesiologists for Basic Anesthetic Monitoring are hereby adopted and incorporated by reference as the standards for anesthetic monitoring by any qualified anesthesia provider under this section.

1. These standards apply to general anesthetics, regional anesthetics, and monitored Level II and III anesthesia care. However, in emergency circumstances, appropriate life support measures take priority. These standards may be exceeded at any time based on the judgment of the responsible supervising physician or anesthesiologist. While these standards are intended to encourage quality patient care, observing them does not guarantee any specific patient outcome. This set of standards addresses only the issue of basic anesthesia monitoring, which is only one component of anesthesia care.

2. In certain rare or unusual circumstances, some of these methods of monitoring may be clinically impractical, and appropriate use of the described monitoring methods may fail to detect adverse clinical developments. In such cases, a brief interruption of continual monitoring may be unavoidable and does not by itself constitute a violation of the standards of practice of this section.

3. Under extenuating circumstances, the responsible supervising physician or anesthesiologist may waive the following requirements:

a. The use of an oxygen analyzer with a low oxygen

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concentration limit alarm, or other technology authorized under board rule which equals or exceeds the quality of the oxygen analyzer, during the administration of general anesthesia with an anesthesia machine.

b. The use of pulse oximetry with a variable pitch pulse tone and an audible low threshold alarm, or other technology authorized under board rule which equals or exceeds the quality of a pulse oximeter, and the use of adequate illumination and exposure of the patient to assess color.

c. The use of capnography, capnometry, or mass spectroscopy, or other technology authorized under board rule which equals or exceeds the quality of capnography, capnometry, or mass spectroscopy, as a quantitative method of analyzing the end-tidal carbon dioxide for continual monitoring for the presence of expired carbon dioxide during ventilation from the time of the endotracheal tube or supraglottic airway placement, until extubation or removal or initiating transfer of the patient to a postoperative care location.

d. The use of continuous electrocardiogram display, or other technology authorized under board rule which equals or exceeds the quality of electrocardiogram display, from the beginning of anesthesia until preparing to leave the anesthetizing location.

e. The measuring of arterial blood pressure and heart rate evaluated at least every 5 minutes during anesthesia.

When any of the monitoring is waived for extenuating circumstances under this subparagraph, it must be documented in a note in the patient’s medical record, including the reasons

for the need to waive the requirement. These standards are not intended for the application to the care of an obstetrical patient in labor or in the conduct of pain management.

(j)1. Because of the rapid changes in patient status during anesthesia, qualified anesthesia personnel must be continuously present in the room to monitor the patient and provide anesthesia care for the entire duration of all general anesthetics, regional anesthetics, and monitored anesthesia care conducted on the patient. In the event that there is a direct known hazard, such as radiation, to the anesthesia personnel which might require intermittent remote observation of the patient, some provision for monitoring the patient must be made. In the event that an emergency requires the temporary absence of the person primarily responsible for the anesthetic, the best judgment of the supervising physician or anesthesiologist shall be exercised in comparing the emergency with the anesthetized patient’s condition and in the selection of the person left responsible for the anesthetic during the temporary absence.

2. During all anesthetics, the patient’s oxygenation, ventilation, circulation, and temperature must be continually evaluated to ensure adequate oxygen concentration in the inspired gas and the blood during all anesthetics.

a. During all general anesthesia using an anesthesia machine, the concentration of oxygen in the patient breathing system must be measured by an oxygen analyzer with a low oxygen concentration limit alarm used to measure blood oxygenation.

b. During all anesthetics, a quantitative method of assessing oxygenation, such as pulse oximetry, must be employed. When a pulse oximeter is used, the variable pitch pulse tone and

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the low threshold alarm must be audible to the qualified anesthesia provider. Adequate illumination and exposure of the patient are necessary to assess color.

c. During all anesthetics, every patient must have the adequacy of his or her ventilation continually evaluated, including, but not limited to, the evaluation of qualitative clinical signs, such as chest excursion, observation of the reservoir breathing bag, and auscultation of breath sounds. Continual monitoring for the presence of expired carbon dioxide must be performed unless invalidated by the nature of the patient's condition, the procedure, or the equipment. Quantitative monitoring of the volume of expired gas is strongly encouraged.

d. When an endotracheal tube or supraglottic airway is inserted, its correct positioning must be verified by clinical assessment and by identification of carbon dioxide in the expired gas. Continual end-tidal carbon dioxide analysis, in use from the time of endotracheal tube or supraglottic airway placement until extubation or removal or initiating transfer of the patient to a postoperative care location, must be performed using a quantitative method, such as capnography, capnometry, or mass spectroscopy or other technology authorized under board rule which equals or exceeds the quality of capnography, capnometry, or mass spectroscopy. When capnography or capnometry is used, the end-tidal carbon dioxide alarm must be audible to the qualified anesthesia provider.

e. When ventilation is controlled by a mechanical ventilator, there must be in continuous use a device that is capable of detecting disconnection of components of the

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breathing system. The device must give an audible signal when its alarm threshold is exceeded.

f. During regional anesthesia without sedation or local anesthesia with no sedation, the adequacy of ventilation must be evaluated by continual observation of qualitative clinical signs. During moderate or deep sedation, the adequacy of ventilation must be evaluated by continual observation of qualitative clinical signs. Monitoring for the presence of exhaled carbon dioxide is recommended.

g. Every patient receiving anesthesia must have the electrocardiogram or other technology authorized under board rule which equals or exceeds the quality of electrocardiogram continuously displayed from the beginning of anesthesia until preparing to leave the anesthetizing location.

h. Every patient receiving anesthesia must have arterial blood pressure and heart rate determined and evaluated at least every 5 minutes.

i. Every patient receiving general anesthesia must have circulatory function continually evaluated by at least one of the following methods:

(I) Palpation of a pulse.

(II) Auscultation of heart sounds.

(III) Monitoring of a tracing of intra-arterial pressure.

(IV) Ultrasound peripheral pulse monitoring.

(V) Pulse plethysmography or oximetry.

(VI) Other technology authorized under board rule which equals or exceeds the quality of any of the methods listed in sub-sub-subparagraphs (I)-(V).

j. Every patient receiving anesthesia must have his or her


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temperature monitored when clinically significant changes in body temperature are intended, anticipated, or suspected.

(k)1. The physician performing the surgery shall ensure that the postoperative care arrangements made for the patient are adequate for the procedure being performed, as required by board rule.

2. Management of postoperative care is the responsibility of the physician performing the surgery and may be delegated as determined by board rule. If the physician performing the surgery is unavailable to provide postoperative care, the physician performing the surgery must notify the patient of his or her unavailability for postoperative care before the procedure.

3. If there is an overnight stay at the office in relation to any surgical procedure:

a. The office must provide at least two persons to act as monitors, one of whom must be certified in advanced cardiac life support, and maintain a monitor-to-patient ratio of at least one monitor to two patients.

b. Once the physician performing the surgery has signed a timed and dated discharge order, the office may provide only one monitor to monitor the patient. The monitor must be qualified by licensure and training to administer all of the medications required on the crash cart and must be certified in advanced cardiac life support.

c. A complete and current crash cart must be present in the office surgery and immediately accessible for the monitors.

4. The physician performing the surgery must be reachable by telephone and readily available to return to the office if

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needed.

5. A policy and procedures manual must be maintained in the office at which Level II and Level III procedures are performed. The manual must be updated and implemented annually. The policy and procedures manual must provide for all of the following:

a. Duties and responsibilities of all personnel.

b. A quality assessment and improvement system designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care and opportunities to improve performance.

c. Cleaning procedures and protocols.

d. Sterilization procedures.

e. Infection control procedures and personnel responsibilities.

f. Emergency procedures.

6. The designated physician shall establish a risk management program that includes all of the following components:

a. The identification, investigation, and analysis of the frequency and causes of adverse incidents.

b. The identification of trends or patterns of adverse incidents.

c. The development of appropriate measures to correct, reduce, minimize, or eliminate the risk of adverse incidents.

d. The documentation of such functions and periodic review of such information at least quarterly by the designated physician.

7. The designated physician shall report to the department any adverse incidents that occur within the scope of office

surgeries. This report must be made within 15 days after the occurrence of an incident as required by s. 458.351.

8. The designated physician is responsible for prominently posting a sign in the office which states that the office is a doctor's office regulated under this section and ss. 458.328, 458.3281, 459.0138 and the applicable rules of the Board of Medicine and Osteopathic Medicine as set forth in rules 64B8 and 64B15, Florida Administrative Code. This notice must also appear prominently within the required patient informed consent.

9. All physicians performing surgery at the office surgery must be qualified by education, training, and experience to perform any procedure the physician performs in the office surgery.

10. When Level II, Level II-A, or Level III procedures are performed in an office surgery, the physician performing the surgery is responsible for providing the patient, in writing, before the procedure, the name and location of the hospital where the physician performing the surgery has privileges to perform the same procedure as the one being performed in the outpatient setting, or the name and location of the hospital where the physician performing the surgery or the facility has a transfer agreement.

(4) LEVEL I OFFICE SURGERY.—

(a) *Scope.*—Level I office surgery includes all of the following:

1. Minor procedures such as excision of skin lesions, moles, warts, cysts, or lipomas, and repair of lacerations or surgery limited to the skin and subcutaneous tissue which are performed under topical or local anesthesia not involving drug-

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induced alteration of consciousness other than minimal pre-operative tranquilization of the patient.

2. Liposuction involving the removal of less than 4,000 cubic centimeters of supernatant fat.

3. Incision and drainage of superficial abscesses; limited endoscopies, such as proctoscopies, skin biopsies, arthrocentesis, thoracentesis, paracentesis, dilation of urethra, cystoscopic procedures, and closed reduction of simple fractures; or small joint dislocations, such as in the finger or toe joints.

4. Procedures in which anesthesia is limited to minimal sedation. The patient's level of sedation must be that of minimal sedation and anxiolysis and the chances of complications requiring hospitalization must be remote. As used in this sub-subparagraph, the term "minimal sedation and anxiolysis" means a drug-induced state during which patients respond normally to verbal commands, and although cognitive function and physical coordination may be impaired, airway reflexes and ventilatory and cardiovascular functions remain unaffected. Controlled substances, as defined in ss. 893.02 and 893.03, must be limited to oral administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

5. Procedures for which chances of complications requiring hospitalization are remote as specified in board rule.

(b) *Standards of practice.*—Standards of practice for Level I office surgery include all of the following:

1. The medical education, training, and experience of the physician performing the surgery must include training on proper dosages and management of toxicity or hypersensitivity to

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regional anesthetic drugs, and the physician must be certified in advanced cardiac life support.

2. At least one operating assistant must be certified in basic life support.

3. Intravenous access supplies, oxygen, oral airways, and a positive pressure ventilation device must be available in the office surgery, along with the following medications, stored per the manufacturer's recommendation:

a. Atropine, 3 mg.

b. Diphenhydramine, 50 mg.

c. Epinephrine, 1 mg in 10 ml.

d. Epinephrine, 1 mg in 1 ml vial, 3 vials total.

e. Hydrocortisone, 100 mg.

f. If a benzodiazepine is administered, flumazenil, 0.5 mg in 5 ml vial, 2 vials total.

g. If an opiate is administered, naloxone, 0.4 mg in 1 ml vial, 2 vials total.

4. When performing minor procedures, such as excision of skin lesions, moles, warts, cysts, or lipomas, and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia, physicians are exempt from subparagraphs 1.-3. Current certification in basic life support is recommended but not required.

5. A physician performing the surgery need not have an assistant during the procedure unless the specific procedure being performed requires an assistant.

(5) LEVEL II OFFICE SURGERY.—

(a) *Scope.*—Level II office surgery includes, but is not limited to, all of the following procedures:

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1. Hemorrhoidectomy.

2. Hernia repair.

3. Large joint dislocations.

4. Colonoscopy.

5. Liposuction involving the removal of up to 4,000 cubic centimeters of supernatant fat.

6. Any other procedure the board designates by rule as a Level II office surgery.

7. Surgeries in which the patient's level of sedation is that of moderate sedation and analgesia or conscious sedation. As used in this subparagraph, the term "moderate sedation and analgesia or conscious sedation" is a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation; interventions are not required to maintain a patent airway; spontaneous ventilation is adequate; and cardiovascular function is maintained. For purposes of the term, a patient reflexively withdrawing from a painful stimulus is not considered a purposeful response.

(b) *Standards of practice.*—Standards of practice for Level II office surgery include, but are not limited to, the following:

1. The physician performing the surgery, or the office where the procedure is being performed, must have a transfer agreement with a licensed hospital within reasonable proximity if the physician performing the procedure does not have staff privileges to perform the same procedure as that being performed in the office surgery setting at a licensed hospital within reasonable proximity. The transfer agreement required by this

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section must be current and have been entered into no more than 3 years before the date of the office's most recent annual inspection under s. 459.0138. A transfer agreement must affirmatively disclose an effective date and a termination date.

2. The physician performing the surgery must have staff privileges at a licensed hospital to perform the same procedure in that hospital as that being performed in the office surgery setting or must be able to document satisfactory completion of training, such as board certification or board eligibility by a board approved by the American Board of Medical Specialties or any other board approved by the Board of Medicine, or must be able to establish comparable background, training, and experience. Such board certification or comparable background, training, and experience must also be directly related to and include the procedures being performed by the physician in the office surgery facility.

3. One assistant must be currently certified in basic life support.

4. The physician performing the surgery must be currently certified in advanced cardiac life support.

5. A complete and current crash cart must be available at all times at the location where the anesthesia is being administered. The designated physician of an office surgery is responsible for ensuring that the crash cart is replenished after each use, the expiration dates for the crash cart's medications are checked weekly, and crash cart events are documented in the cart's logs. Medicines must be stored per the manufacturer's recommendations, and multi-dose vials must be dated once opened and checked daily for expiration. The crash

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cart must, at a minimum, include the following intravenous or inhaled medications:

a. Adenosine, 18 mg.

b. Albuterol, 2.5 mg with a small volume nebulizer.

c. Amiodarone, 300 mg.

d. Atropine, 3 mg.

e. Calcium chloride, 1 gram.

f. Dextrose, 50 percent; 50 ml.

g. Diphenhydramine, 50 mg.

h. Dopamine, 200 mg, minimum.

i. Epinephrine, 1 mg, in 10 ml.

j. Epinephrine, 1 mg in 1 ml vial, 3 vials total.

k. Flumazenil, 1 mg.

l. Furosemide, 40 mg.

m. Hydrocortisone, 100 mg.

n. Lidocaine appropriate for cardiac administration, 100 mg.

o. Magnesium sulfate, 2 grams.

p. Naloxone, 1.2 mg.

q. A beta blocker class drug.

r. Sodium bicarbonate, 50 mEq/50 ml.

s. Paralytic agent that is appropriate for use in rapid sequence intubation.

t. A calcium channel blocker class drug.

u. If nonneuraxial regional blocks are performed, Intralipid, 20 percent, 500 ml solution.

v. Any additional medication the board determines by rule is warranted for patient safety and by the evolution of technology and medical practice.

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6. In the event of a drug shortage, the designated physician is authorized to substitute a therapeutically equivalent drug that meets the prevailing practice standards.

7. The designated physician is responsible for ensuring that the office maintains documentation of its unsuccessful efforts to obtain the required drug.

8. The designated physician is responsible for ensuring that the following are present in the office surgery:

a. A benzodiazepine.

b. A positive pressure ventilation device, such as Ambu, plus oxygen supply.

c. An end-tidal carbon dioxide detection device.

d. Monitors for blood pressure, electrocardiography, and oxygen saturation.

e. Emergency intubation equipment that must, at a minimum, include suction devices, endotracheal tubes, working laryngoscopes, oropharyngeal airways, nasopharyngeal airways, and bag valve mask apparatus that are sized appropriately for the specific patient.

f. A working defibrillator with defibrillator pads or defibrillator gel, or an automated external defibrillator unit.

g. Sufficient backup power to allow the physician performing the surgery to safely terminate the procedure and to allow the patient to emerge from the anesthetic, all without compromising the sterility of the procedure or the environment of care.

h. Working sterilization equipment cultured weekly.

i. Sufficient intravenous solutions and equipment for a minimum of a week’s worth of surgical cases.

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j. Any other equipment required by board rule, as warranted by the evolution of technology and medical practice.

9. The physician performing the surgery must be assisted by a qualified anesthesia provider, which may include any of the following types of providers:

a. An anesthesiologist.

b. A certified registered nurse anesthetist.

c. A registered nurse, if the physician performing the surgery is certified in advanced cardiac life support and the registered nurse assists only with local anesthesia or conscious sedation.

An anesthesiologist assistant may assist the anesthesiologist as provided by board rule. An assisting anesthesia provider may not function in any other capacity during the procedure.

10. If additional anesthesia assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, osteopathic physician, registered nurse, licensed practical nurse, or operating room technician.

11. The designated physician is responsible for ensuring that each patient is monitored in the recovery room until fully recovered from anesthesia. Such monitoring must be provided by a licensed physician, physician assistant, registered nurse with postanesthesia care unit experience, or the equivalent who is currently certified in advanced cardiac life support, or, in the case of pediatric patients, currently certified in pediatric advanced life support.

(6) LEVEL II-A OFFICE SURGERY.—

(a) *Scope.*—Level II-A office surgeries are those Level II office surgeries that have a maximum planned duration of 5 minutes or less and in which the chances of complications requiring hospitalization are remote.

(b) *Standards of practice.*—

1. All practice standards for Level II office surgery set forth in paragraph (5)(b) must be met for Level II-A office surgery except for the requirements set forth in subparagraph (5)(b)9. regarding assistance by a qualified anesthesia provider.

2. During the surgical procedure, the physician performing the surgery must be assisted by a licensed physician, physician assistant, registered nurse, or licensed practical nurse.

3. Additional assistance may be required by specific procedure or patient circumstances.

4. Following the procedure, a licensed physician, physician assistant, or registered nurse must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia. The monitoring provider must be currently certified in advanced cardiac life support, or, in the case of pediatric patients, currently certified in pediatric advanced life support.

(7) LEVEL III OFFICE SURGERY.—

(a) *Scope.*—

1. Level III office surgery includes those types of surgery during which the patient’s level of sedation is that of deep sedation and analgesia or general anesthesia. As used in this subparagraph, the term:

a. “Deep sedation and analgesia” means a drug-induced

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depression of consciousness during which:

(I) Patients cannot be easily aroused but respond purposefully following repeated or painful stimulation;

(II) The ability to independently maintain ventilatory function may be impaired;

(III) Patients may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate; and

(IV) Cardiovascular function is usually maintained.

For purposes of this sub-subparagraph, a reflexive withdrawal from a painful stimulus by a patient is not considered a purposeful response.

b. "General anesthesia" means a drug-induced loss of consciousness during which:

(I) Patients are not arousable, even by painful stimulation;

(II) The ability to independently maintain ventilatory function is often impaired;

(III) Patients often require assistance in maintaining a patent airway and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function; and

(IV) Cardiovascular function may be impaired.

2. The use of spinal or epidural anesthesia for a procedure requires that procedure to be considered a Level III office surgery.

3. Only patients classified under the American Society of Anesthesiologists' (ASA) risk classification criteria as Class I or Class II are appropriate candidates for a Level III office


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surgery.

a. All Level III office surgeries on patients classified as ASA III or higher are to be performed only in a hospital or ambulatory surgical center.

b. For all ASA II patients above the age of 50, the physician performing the surgery must obtain a complete workup performed before the performance of a Level III office surgery in the office surgery setting.

c. If the patient has a cardiac history or is deemed to be a complicated medical patient, the patient must have a preoperative electrocardiogram and be referred to an appropriate consultant for medical optimization. The referral to a consultant may be waived after evaluation by the patient's anesthesiologist.

(b) *Standards of practice.*—Practice standards for Level III office surgery include all Level II office surgery standards and all of the following requirements:

1. The physician performing the surgery must have staff privileges at a licensed hospital to perform the same procedure in that hospital as that being performed in the office surgery setting or must be able to document satisfactory completion of training, such as board certification or board qualification by a board approved by the American Board of Medical Specialties or any other board approved by the Board of Medicine, or must be able to demonstrate to the accrediting organization or to the department comparable background, training, and experience. Such board certification or comparable background, training, and experience must also be directly related to and include the procedure being performed by the physician performing the

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surgery in the office surgery setting. In addition, the physician performing the surgery must have knowledge of the principles of general anesthesia.

2. The physician performing the surgery must be currently certified in advanced cardiac life support.

3. At least one operating assistant must be currently certified in basic life support.

4. An emergency policy and procedures manual related to serious anesthesia complications must be available in the office surgery and reviewed biannually by the designated physician, practiced with staff, updated, and posted in a conspicuous location in the office. Topics to be covered in the manual must include all of the following:

a. Airway blockage and foreign body obstruction.

b. Allergic reactions.

c. Bradycardia.

d. Bronchospasm.

e. Cardiac arrest.

f. Chest pain.

g. Hypoglycemia.

h. Hypotension.

i. Hypoventilation.

j. Laryngospasm.

k. Local anesthetic toxicity reaction.

l. Malignant hyperthermia.

m. Any other topics the board determines by rule are warranted for patient safety and by the evolution of technology and medical practice.

5. An office surgery performing Level III office surgeries

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must maintain all of the equipment and medications required for Level II office surgeries and comply with all of the following additional requirements:

a. Maintain at least 720 mg of dantrolene on site if halogenated anesthetics or succinylcholine are used.

b. Equipment and medication for monitored postanesthesia recovery must be available in the office.

6. Anesthetic safety regulations must be developed, posted in a conspicuous location in the office, and enforced by the designated physician. Such regulations must include all of the following requirements:

a. All operating room electrical and anesthesia equipment must be inspected at least semiannually, and a written record of the results and corrective actions must be maintained.

b. Flammable anesthetic agents may not be employed in office surgery facilities.

c. Electrical equipment in anesthetizing areas must be on an audiovisual line isolation monitor, with the exception of radiologic equipment and fixed lighting more than 5 feet above the floor.

d. Each anesthesia gas machine must have a pin-index system or equivalent safety system and a minimum oxygen flow safety device.

e. All reusable anesthesia equipment in direct contact with a patient must be cleaned or sterilized as appropriate after each use.

f. The following monitors must be applied to all patients receiving conduction or general anesthesia:

(I) Blood pressure cuff.

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(II) A continuous temperature device, readily available to measure the patient's temperature.

(III) Pulse oximeter.

(IV) Electrocardiogram.

(V) An inspired oxygen concentration monitor and a capnograph, for patients receiving general anesthesia.

g. Emergency intubation equipment must be available in all office surgery suites.

h. Surgical tables must be capable of Trendelenburg and other positions necessary to facilitate surgical procedures.

i. An anesthesiologist, a certified registered nurse anesthetist, an anesthesiologist assistant, or a physician assistant qualified as set forth in board rule must administer the general or regional anesthesia.

j. A physician, a registered nurse, a licensed practical nurse, a physician assistant, or an operating room technician must assist with the surgery. The anesthesia provider may not function in any other capacity during the procedure.

k. The patient must be monitored in the recovery room until he or she has fully recovered from anesthesia. The monitoring must be provided by a physician, a physician assistant, a certified registered nurse anesthetist, an anesthesiologist assistant, or a registered nurse with postanesthesia care unit experience or the equivalent who is currently certified in advanced cardiac life support, or, in the case of pediatric patients, currently certified in pediatric advanced life support.

(8) RULEMAKING.—The board may adopt by rule additional standards of practice for physicians who perform office

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surgeries or procedures under this section as warranted for patient safety and by the evolution of technology and medical practice.

Section 5. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to office surgeries; amending ss. 458.328 and 459.0138, F.S.; revising the types of procedures for which a medical office must register with the Department of Health to perform office surgeries; specifying inspection procedures for such offices seeking registration with the department; requiring that certain offices seeking registration provide proof to the department that they have met specified requirements and rules; requiring the department to inspect such offices to ensure that certain equipment and procedures are present or in place; requiring the department to notify the Agency for Health Care Administration if an applicant is unable to provide certain proof to the department and to request that the agency inspect and consult with the office; deleting obsolete language; providing that the department may not register and must seek an emergency suspension of an office under specified circumstances; requiring that each office, as a


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condition of registration, list certain medical personnel and thereafter notify the department of the addition or termination of such personnel within a specified timeframe; providing for disciplinary action for failure to comply; revising the materials that the department must review when inspecting a registered office; requiring offices already registered with the department as of a specified date to provide a registration update within a specified timeframe; specifying requirements for such registration update process; revising requirements for the standards of practice for office surgeries; providing an administrative penalty; revising rulemaking requirements; creating ss. 458.3281 and 459.0139, F.S.; providing construction; defining terms; specifying general requirements for office surgeries; specifying standards of practice for office surgeries, delineated by the level of surgery being performed; authorizing the Board of Medicine and the Board of Osteopathic Medicine, as applicable, to adopt additional standards of practice by rule; providing an effective date.

958154

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Fiscal Policy (Garcia) recommended the following:

Senate Amendment to Amendment (148378)

Delete line 723

and insert:

performed in the office surgery setting, or the name and

107010

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Fiscal Policy (Garcia) recommended the following:

Senate Amendment to Amendment (148378) (with title amendment)

Between lines 1108 and 1109
insert:

(8) EXEMPTION.—This section does not apply to a physician who is dually licensed as a dentist under chapter 466 when such practitioner is performing dental procedures that fall within the scope of practice of dentistry and are regulated under chapter 466.

107010

Between lines 2212 and 2213
insert:
(8) EXEMPTION.—This section does not apply to a physician who is dually licensed as a dentist under chapter 466 when such practitioner is performing dental procedures that fall within the scope of practice of dentistry and are regulated under chapter 466.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Between lines 2261 and 2262
insert:
providing an exemption;

By the Committee on Health Policy; and Senator Garcia

588-02981-24 20241188c1

A bill to be entitled

An act relating to office surgeries; amending ss. 458.328 and 459.0138, F.S.; revising the types of procedures for which a medical office must register with the Department of Health to perform office surgeries; specifying notification and inspection procedures for the department and the Agency for Health Care Administration if, during the registration process, the department determines that the performance of specified procedures in the office would create a risk to patient safety such that the office should instead be regulated as an ambulatory surgical center; deleting obsolete language; making technical and clarifying changes; revising standards of practice for office surgeries; requiring medical offices already registered with the department to perform certain office surgeries as of a specified date to reregister if such offices perform specified procedures; specifying notification and inspection procedures for the department and the agency in the event that, during the reregistration process, the department determines that the performance of specified procedures in an office creates a risk of patient safety such that the office should instead be regulated as an ambulatory surgical center; requiring an office to cease performing the specified procedures and relinquish its office surgery registration and instead seek licensure as an ambulatory surgical center under such circumstances; requiring the

588-02981-24 20241188c1

department to develop a schedule for reregistration of medical offices affected by this act, to be completed by a specified date; providing an effective date.

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

Section 1. Paragraphs (a), (b), and (h) of subsection (1) and subsection (2) of section 458.328, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

458.328 Office surgeries.—

(1) REGISTRATION.—

(a)1. An office in which a physician performs a liposuction procedure in which more than 1,000 cubic centimeters of supernatant fat is temporarily or permanently removed, a liposuction procedure in which the patient is rotated 180 degrees or more during the procedure, a gluteal fat grafting procedure, a Level II office surgery, or a Level III office surgery must register with the department. ~~unless the office is licensed as~~ A facility licensed under chapter 390 or chapter 395 may not be registered under this section.

2. The department must complete an inspection of any office seeking registration under this section before the office may be registered.

3. If the department determines that an office seeking registration under this section is one in which a physician is likely to perform, or intends to perform, liposuction procedures that include a patient being rotated 180 degrees or more during the procedure or in which a physician is likely to perform, or intends to perform, gluteal fat grafting procedures, and the

department determines that the performance of such procedures in the office would create a significant risk to patient safety and the interests of patient safety would be better served if such procedures were instead regulated under the requirements of ambulatory surgical center licensure under chapter 395:

a. The department must notify the Agency for Health Care Administration of its determination.

b. The agency must inspect the office and determine, in the interest of patient safety, whether the office is a candidate for ambulatory surgical center licensure, notwithstanding the office's failure to meet all requirements associated with such licensure at the time of inspection and notwithstanding any pertinent exceptions provided under s. 395.002(3).

c. If the agency determines that an office is a candidate for ambulatory surgical center licensure under sub-subparagraph b., the agency must notify the office and the department, and the office may not register under this section and must instead attain ambulatory surgical center licensure under chapter 395 before such surgeries may be conducted in the office.

d. If the agency determines that an office is not a candidate for ambulatory surgical center licensure under sub-subparagraph b., the agency must notify the office and the department, and the department shall resume the office's registration process.

(b) ~~By January 1, 2020,~~ Each office registered under this section or s. 459.0138 must designate a physician who is responsible for the office's compliance with the office health and safety requirements of this section and rules adopted hereunder. A designated physician must have a full, active, and

unencumbered license under this chapter or chapter 459 and shall practice at the office for which he or she has assumed responsibility. Within 10 calendar days after the termination of a designated physician relationship, the office must notify the department of the designation of another physician to serve as the designated physician. The department may suspend the registration of an office if the office fails to comply with the requirements of this paragraph.

~~(h) A physician may only perform a procedure or surgery identified in paragraph (a) in an office that is registered with the department. The board shall impose a fine of $5,000 per day on a physician who performs a procedure or surgery in an office that is not registered with the department.~~

(2) STANDARDS OF PRACTICE.—

(a) A physician may not perform any surgery or procedure identified in paragraph (1)(a) in a setting other than an office registered under this section or a facility licensed under chapter 390 or chapter 395, as applicable. The board shall impose a fine of $5,000 per incident on a physician who violates this paragraph ~~performing a gluteal fat grafting procedure in an office surgery setting shall adhere to standards of practice pursuant to this subsection and rules adopted by the board~~.

(b) Office surgeries may not:

1. Be a type of surgery that generally results in blood loss of more than 10 percent of estimated blood volume in a patient with a normal hemoglobin level;

2. Require major or prolonged intracranial, intrathoracic, abdominal, or joint replacement procedures, except for laparoscopic procedures;

3. Involve major blood vessels and be performed with direct visualization by open exposure of the major blood vessel, except for percutaneous endovascular intervention; or

4. Be emergent or life threatening.

(c) A physician performing a gluteal fat grafting procedure in an office surgery setting shall adhere to standards of practice under this subsection and rules adopted by the board, which include, but are not limited to, all of the following:

1. A physician performing a gluteal fat grafting procedure must conduct an in-person examination of the patient while physically present in the same room as the patient no later than the day before the procedure.

2. Before a physician may delegate any duties during a gluteal fat grafting procedure, the patient must provide written, informed consent for such delegation. Any duty delegated by a physician during a gluteal fat grafting procedure must be performed under the direct supervision of the physician performing such procedure. Fat extraction and gluteal fat injections must be performed by the physician and may not be delegated.

3. Fat may only be injected into the subcutaneous space of the patient and may not cross the fascia overlying the gluteal muscle. Intramuscular or submuscular fat injections are prohibited.

4. When the physician performing a gluteal fat grafting procedure injects fat into the subcutaneous space of the patient, the physician must use ultrasound guidance, or guidance with other technology authorized under board rule which equals or exceeds the quality of ultrasound, during the placement and

navigation of the cannula to ensure that the fat is injected into the subcutaneous space of the patient above the fascia overlying the gluteal muscle. Such guidance with the use of ultrasound or other technology is not required for other portions of such procedure.

5. An office in which a physician performs gluteal fat grafting procedures must at all times maintain a ratio of one physician to one patient during all phases of the procedure, beginning with the administration of anesthesia to the patient and concluding with the extubation of the patient. After a physician has commenced, and while he or she is engaged in, a gluteal fat grafting procedure, the physician may not commence or engage in another gluteal fat grafting procedure or any other procedure with another patient at the same time.

(d) If a procedure in an office surgery setting results in hospitalization, the incident must be reported as an adverse incident pursuant to s. 458.351.

~~(c) An office in which a physician performs gluteal fat grafting procedures must at all times maintain a ratio of one physician to one patient during all phases of the procedure, beginning with the administration of anesthesia to the patient and concluding with the extubation of the patient. After a physician has commenced, and while he or she is engaged in, a gluteal fat grafting procedure, the physician may not commence or engage in another gluteal fat grafting procedure or any other procedure with another patient at the same time.~~

(4) REREGISTRATION.—An office that registered under this section before July 1, 2024, in which a physician performs liposuction procedures that include a patient being rotated 180

degrees or more during the procedure or in which a physician performs gluteal fat grafting procedures must seek reregistration with the department consistent with the parameters of initial registration under subsection (1) according to a schedule developed by the department. During the reregistration process, if the department determines that the performance of such procedures in the office creates a significant risk to patient safety and that the interests of patient safety would be better served if such procedures were instead regulated under the requirements of ambulatory surgical center licensure under chapter 395:

(a) The department must notify the Agency for Health Care Administration of its determination; and

(b) The agency must inspect the office and determine, in the interest of patient safety, whether the office is a candidate for ambulatory surgical center licensure, notwithstanding the office's failure to meet all requirements associated with such licensure at the time of inspection and notwithstanding any pertinent exceptions provided under s. 395.002(3).

If the agency determines that an office is a candidate for ambulatory surgical center licensure under paragraph (b), the agency must notify the office and the department, and the office must cease performing procedures described in this subsection. The office may not recommence performing such procedures without first relinquishing its registration under this section and attaining ambulatory surgical center licensure under chapter 395.

Section 2. Paragraphs (a), (b), and (h) of subsection (1) and subsection (2) of section 459.0138, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

459.0138 Office surgeries.—

(1) REGISTRATION.—

(a)1. An office in which a physician performs a liposuction procedure in which more than 1,000 cubic centimeters of supernatant fat is temporarily or permanently removed, a liposuction procedure in which the patient is rotated 180 degrees or more during the procedure, a gluteal fat grafting procedure, a Level II office surgery, or a Level III office surgery must register with the department. ~~unless the office is licensed as~~ A facility licensed under chapter 390 or chapter 395 may not be registered under this section.

2. The department must complete an inspection of any office seeking registration under this section before the office may be registered.

3. If the department determines that an office seeking registration under this section is one in which a physician is likely to perform, or intends to perform, liposuction procedures that include a patient being rotated 180 degrees or more during the procedure or in which a physician is likely to perform, or intends to perform, gluteal fat grafting procedures, and the department determines that the performance of such procedures in the office would create a significant risk to patient safety and the interests of patient safety would be better served if such procedures were instead regulated under the requirements of ambulatory surgical center licensure under chapter 395:

a. The department must notify the Agency for Health Care

Administration of its determination.

b. The agency must inspect the office and determine, in the interest of patient safety, whether the office is a candidate for ambulatory surgical center licensure, notwithstanding the office's failure to meet all requirements associated with such licensure at the time of inspection and notwithstanding any pertinent exceptions provided under s. 395.002(3).

c. If the agency determines that an office is a candidate for ambulatory surgical center licensure under sub-subparagraph b., the agency must notify the office and the department, and the office may not register under this section and must instead attain ambulatory surgical center licensure under chapter 395 before such surgeries may be conducted in the office.

d. If the agency determines that an office is not a candidate for ambulatory surgical center licensure under sub-subparagraph b., the agency must notify the office and the department, and the department shall resume the office's registration process.

(b) ~~By January 1, 2020,~~ Each office registered under this section or s. 458.328 must designate a physician who is responsible for the office's compliance with the office health and safety requirements of this section and rules adopted hereunder. A designated physician must have a full, active, and unencumbered license under this chapter or chapter 458 and shall practice at the office for which he or she has assumed responsibility. Within 10 calendar days after the termination of a designated physician relationship, the office must notify the department of the designation of another physician to serve as the designated physician. The department may suspend a

registration for an office if the office fails to comply with the requirements of this paragraph.

~~(h) A physician may only perform a procedure or surgery identified in paragraph (a) in an office that is registered with the department. The board shall impose a fine of $5,000 per day on a physician who performs a procedure or surgery in an office that is not registered with the department.~~

(2) STANDARDS OF PRACTICE.—

(a) A physician may not perform any surgery or procedure identified in paragraph (1)(a) in a setting other than an office registered under this section or a facility licensed under chapter 390 or chapter 395, as applicable. The board shall impose a fine of $5,000 per incident on a physician who violates this paragraph ~~performing a gluteal fat grafting procedure in an office surgery setting shall adhere to standards of practice pursuant to this subsection and rules adopted by the board~~.

(b) Office surgeries may not:

1. Be a type of surgery that generally results in blood loss of more than 10 percent of estimated blood volume in a patient with a normal hemoglobin level;

2. Require major or prolonged intracranial, intrathoracic, abdominal, or joint replacement procedures, except for laparoscopic procedures;

3. Involve major blood vessels and be performed with direct visualization by open exposure of the major blood vessel, except for percutaneous endovascular intervention; or

4. Be emergent or life threatening.

(c) A physician performing a gluteal fat grafting procedure in an office surgery setting shall adhere to standards of

practice under this subsection and rules adopted by the board, which include, but are not limited to, all of the following:

1. A physician performing a gluteal fat grafting procedure must conduct an in-person examination of the patient while physically present in the same room as the patient no later than the day before the procedure.

2. Before a physician may delegate any duties during a gluteal fat grafting procedure, the patient must provide written, informed consent for such delegation. Any duty delegated by a physician during a gluteal fat grafting procedure must be performed under the direct supervision of the physician performing such procedure. Fat extraction and gluteal fat injections must be performed by the physician and may not be delegated.

3. Fat may only be injected into the subcutaneous space of the patient and may not cross the fascia overlying the gluteal muscle. Intramuscular or submuscular fat injections are prohibited.

4. When the physician performing a gluteal fat grafting procedure injects fat into the subcutaneous space of the patient, the physician must use ultrasound guidance, or guidance with other technology authorized under board rule which equals or exceeds the quality of ultrasound, during the placement and navigation of the cannula to ensure that the fat is injected into the subcutaneous space of the patient above the fascia overlying the gluteal muscle. Such guidance with the use of ultrasound or other technology is not required for other portions of such procedure.

5. An office in which a physician performs gluteal fat

grafting procedures must at all times maintain a ratio of one physician to one patient during all phases of the procedure, beginning with the administration of anesthesia to the patient and concluding with the extubation of the patient. After a physician has commenced, and while he or she is engaged in, a gluteal fat grafting procedure, the physician may not commence or engage in another gluteal fat grafting procedure or any other procedure with another patient at the same time.

(d) If a procedure in an office surgery setting results in hospitalization, the incident must be reported as an adverse incident pursuant to s. 458.351.

~~(e) An office in which a physician performs gluteal fat grafting procedures must at all times maintain a ratio of one physician to one patient during all phases of the procedure, beginning with the administration of anesthesia to the patient and concluding with the extubation of the patient. After a physician has commenced, and while he or she is engaged in, a gluteal fat grafting procedure, the physician may not commence or engage in another gluteal fat grafting procedure or any other procedure with another patient at the same time.~~

(4) REREGISTRATION.—An office that registered under this section before July 1, 2024, in which a physician performs liposuction procedures that include a patient being rotated 180 degrees or more during the procedure or in which a physician performs gluteal fat grafting procedures must seek reregistration with the department consistent with the parameters of initial registration under subsection (1) according to a schedule developed by the department. During the reregistration process, if the department determines that the

performance of such procedures in the office creates a significant risk to patient safety and that the interests of patient safety would be better served if such procedures were instead regulated under the requirements of ambulatory surgical center licensure under chapter 395:

(a) The department must notify the Agency for Health Care Administration of its determination;

(b) The agency must inspect the office and determine, in the interest of patient safety, whether the office is a candidate for ambulatory surgical center licensure notwithstanding the office's failure to meet all requirements associated with such licensure at the time of inspection and notwithstanding any pertinent exceptions provided under s. 395.002(3).

If the agency determines that an office is a candidate for ambulatory surgical center licensure under paragraph (b), the agency must notify the office and the department, and the office must cease performing procedures described in this subsection. The office may not recommence performing such procedures without first relinquishing its registration under this section and attaining ambulatory surgery center licensure under chapter 395.

Section 3. The Department of Health shall develop a schedule for reregistration of offices affected by the amendments made to s. 458.328(1) or s. 459.0138(1), Florida Statutes, by this act. Registration of all such offices must be completed by December 1, 2024.

Section 4. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	SB 1190
INTRODUCER:	Senator Ingoglia
SUBJECT:	Online Sting Operations Grant Program
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	**Favorable**
2.	Kolich	Harkness	ACJ	**Favorable**
3.	Parker	Yeatman	FP	**Favorable**

I. Summary:

SB 1190 creates s. 943.0411, F.S., establishing the Online Sting Operations Grant Program within the Florida Department of Law Enforcement (FDLE). The purpose of the program is to award grants to law enforcement agencies to support their creation of sting operations to target individuals online who prey upon children or attempt to do so.

The FDLE will annually award to local law enforcement agencies funds specifically appropriated for the grant program to cover expenses related to computers, electronics, software, and other related necessary supplies.

The bill provides that grants must be provided to local law enforcement agencies if funds are appropriated for that purpose. The total amount of grants awarded may not exceed funding appropriated for the grant program.

The bill authorizes the FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

The bill may have a negative workload impact on the FDLE. See Section V., Fiscal Impact Statement.

The bill becomes effective July 1, 2024.

II. Present Situation:

Local law enforcement agencies routinely conduct sting operations targeting online predators who may intend to commit crimes against children. In Leon County, the Capital City Human

Trafficking Taskforce has arrested 16 people since its formation in late 2023.[1] The taskforce's undercover operations targeted individuals engaging in Internet crimes against children, prostitution, and human trafficking.

On January 11, 2024, the Hillsborough County Sheriff's Office (HSCO) announced the arrest of 123 people over the course of three months, including online predators who thought they were communicating with children and young teens but were actually communicating with HCSO detectives.[2]

On October 10, 2023, the Polk County Sheriff's Office announced that its fourth undercover sting operation resulted in the arrest of six people alleged to have communicated online with persons they thought were children or guardians for the purpose of soliciting unlawful sexual activity with minors.[3]

Florida Crimes Against Children Criminal Profiling Program

Section 943.041, F.S., creates the Crimes Against Children Criminal Profiling Program (CACP) within the FDLE. The CACP provides investigative, training, and intelligence assistance to local law enforcement agencies while taking a proactive approach to investigating and preventing child sexual exploitation.[4,5]

Intelligence Assistance

The first step in this program is the identification of local, state, and federal law enforcement professionals working these cases. The networking and sharing of intelligence and investigative data enhances the existing communications network of the Florida Investigative Support Center (FISC) within the FDLE. This database enables FDLE personnel to identify patterns and movements of specific criminal activities. In addition, it provides local law enforcement investigators with a statewide medium through which they share criminal information.

Investigative Assistance

Special Agents of the CACP have received extensive training in the area of crimes against children. Consequently, members of this program are qualified to investigate multi-jurisdictional

[1] Elena Barrera, *Human trafficking taskforce arrests over a dozen individuals during undercover operation* (January 11, 2024), Tallahassee Democrat, https://news.yahoo.com/human-trafficking-taskforce-arrests-over-020052310.html?guccounter=1 (last visited January 19, 2024).The taskforce includes members from the Department of Homeland Security, the United States Attorney's Office for the Northern District of Florida, the State Attorney's Office for the Second Judicial Circuit, the Leon County Sheriff's Office, FDLE, the Tallahassee Police Department, the Federal Bureau of Investigations, the Internal Revenue Service, and the United States Marshals Service.
[2] HCSO, Operation Renewed Hope, https://teamhcso.com/News/PressRelease/69dfc87b-5961-4432-b0a4-b123d01d11cf/en-US (last visited January 19, 2024).
[3] Polk County Sheriff's Office, Six suspects arrested during "Operation Child Protector IV" focusing on online solicitation of minors (Oct. 10, 2023) https://www.polksheriff.org/news-investigations/2023/10/10/six-suspects-arrested-during-operation-child-protector-iv-focusing-on-online-solicitation-of-minors (last visited on January 19, 2024).
[4] Section 943.041, F.S.
[5] Florida Department of Law Enforcement, *Crimes Against Children*, available at https://www.fdle.state.fl.us/mcicsearch/crimesagainstchildren.asp#:~:text=The%20Crimes%20Against%20Children%20Program,to%20local%20law%20enforcement%20agencies. (last visited January 19, 2024).

operations and organized crimes against children. In addition, investigative and technical assistance is provided to local law enforcement agencies.

The major concerns include:
- Serial Child Homicides.
- Pedophiles.
- Child Pornography.
- Child Sexual Abuse.

The CACP also has the ability to utilize the services of FDLE Special Agents who have been specifically trained in psychological profiling.[6]

Sting operations cover a wide variety of crimes and use different techniques depending on the operation's immediate or long-term purpose. It is difficult to define precisely what a sting operation is. However, with some exceptions, all sting operations contain four basic elements:
- An opportunity or enticement to commit a crime, either created or exploited by police.
- A targeted likely offender or group of offenders for a particular crime type.
- An undercover or hidden police officer or surrogate, or some form of deception.
- A "gotcha" climax when the operation ends with arrests.[7]

Sting operations targeting child predators online may frequently result in criminal charges for the offenses described below.

Certain Uses of Computer Services or Devices Prohibited

Under s. 847.0135(3), F.S., it is a third degree felony[8] for a person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:
- Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in ch. 794 (sexual battery), ch. 800 (lewd or lascivious offenses), or ch. 827 (child sexual performance), F.S., or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child;[9] or
- Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in any sexual conduct.[10]

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[6] *Id*.
[7] Graeme R. Newman, *Sting Operations, Center for Problem-Oriented Policing*, 2007, https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-p134-pub.pdf (last visited January 18, 2024).
[8] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine pursuant to s. 775.082, s. 775.083, and s. 775.084, F.S.
[9] Section 847.0135(3)(a), F.S.
[10] Section 847.0135(3)(b), F.S.

Traveling to Meet a Minor

Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:[11]

- Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child;[12] or
- Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in any sexual conduct, commits a felony of the second degree.[13,14]

III. Effect of Proposed Changes:

The bill creates s. 943.0411, F.S., establishing the Online Sting Operations Grant Program within the FDLE. The purpose of the program is to award grants to law enforcement agencies to support their creation of sting operations to target individuals online who prey upon children or attempt to do so.

The FDLE will annually award to local law enforcement agencies funds specifically appropriated for the grant program to cover expenses related to computers, electronics, software, and other related necessary supplies.

The bill provides that grants must be provided to local law enforcement agencies if funds are appropriated for that purpose. The total amount of grants awarded may not exceed funding appropriated for the grant program.

The bill authorizes the FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

The bill becomes effective July 1, 2024.

[11] Section 847.0135(4), F.S.
[12] Section 847.0135(4)(a), F.S.
[13] Section 847.0135(4)(b), F.S.
[14] A second degree felony is punishable by a term of imprisonment not exceeding 15 years pursuant to s. 775.082, s. 775.083, or s. 775.084, 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:

None.

C. Government Sector Impact:

The bill's provisions may increase workload for the FDLE. The FDLE requested one position and a total of $96,504 to address the estimated workload associated with the grant process.[15] As of December 2023, the FDLE had two vacant positions in the Office of Justice Grants that could be filled to address this workload. Moreover, in SB 2500, the General Appropriations Bill for Fiscal Year 2024-2025, the Senate funded two positions and funds totaling $217,887 for the Office of Criminal Justice Grants. If funded, these positions would offset the FDLE's need for additional positions.

VI. Technical Deficiencies:

None.

[15] FDLE, *2024 Legislative Bill Analysis*, (January 8, 2023), at p. 3 (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.0411 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.)

None.

B. Amendments:

None.

By Senator Ingoglia

11-01285-24 20241190__

A bill to be entitled

An act relating to the Online Sting Operations Grant Program; creating s. 943.0411, F.S.; creating the Online Sting Operations Grant Program within the Department of Law Enforcement to support local law enforcement agencies in creating certain sting operations to protect children; requiring the department to annually award grant funds to local law enforcement agencies; providing funding requirements; authorizing the department to establish criteria and set specific time periods for the acceptance of applications and the selection process for awarding grant funds; providing an effective date.

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

Section 1. Section 943.0411, Florida Statutes, is created to read:

943.0411 Online Sting Operations Grant Program for local law enforcement agencies to protect children.—

(1) There is created within the department the Online Sting Operations Grant Program to award grants to local law enforcement agencies to support their creation of sting operations to target individuals online preying upon children or attempting to do so.

(2) The department shall annually award to local law enforcement agencies any funds specifically appropriated for the grant program to cover expenses related to computers, electronics, software, and other related necessary supplies.

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Grants must be provided to local law enforcement agencies if funds are appropriated for that purpose by law. The total amount of grants awarded may not exceed funding appropriated for the grant program.

(3) The department may establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

Section 2. This act shall take effect July 1, 2024.

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 Fiscal Policy

BILL:	CS/SB 1356
INTRODUCER:	Criminal Justice Committee and Senator Calatayud
SUBJECT:	School Safety
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Cellon	Stokes	CJ	**Fav/CS**
3.	Brick	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1356 modifies school safety requirements for public and private schools. The bill:

- Requires schools and sheriffs to report guardian information to the Florida Department of Law Enforcement.
- Establishes a statewide school safety inspection process with regular inspections on a 3-year cycle, reporting, and compliance verification.
- Requires district school boards to adopt a progressive discipline policy for school safety violations.
- Authorizes the Marjory Stoneman Douglas High School Public Safety Commission to research best practices in school safety and update legislative recommendations.
- Requires the Florida Safe Schools Assessment Tool to specifically address best practices for locked access points and safe spaces in schools.
- Provides for criminal penalties against a person who knowingly or willfully operates a drone over a K-12 school or allows a drone to make contact with a school.
- Modifies existing guardian training requirements to require a guardian candidate to receive training to improve the school guardian's knowledge and skills necessary to respond to and de-escalate incidents on school premises.
- Includes, subject to appropriation, grants for local law enforcement to assist private schools with security assessments and threat management programs.
- Enables certification as a guardian without initial training for certain qualified individuals.
- Requires specific annual instruction to be provided to students regarding FortifyFL.

- Requires the district school superintendent to notify the postsecondary institution at which a student is dually enrolled of certain allegations of crimes by the student.

The bill takes effect July 1, 2024.

II. Present Situation:

Marjory Stoneman Douglas High School Public Safety Commission

The Marjory Stoneman Douglas High School Public Safety Commission (commission) was established in 2018 to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents, and to develop recommendations for system improvements.[1] The commission is housed within the Florida Department of Law Enforcement.[2] The commission submitted its initial report to the Governor and the Legislature on January 2, 2019,[3] and its second report on November 1, 2019.[4]

Among its various duties, the commission is required to monitor implementation of school safety legislation by:

- Evaluating the activities of the Office of Safe Schools (OSS) to provide guidance to school districts, identifying areas of noncompliance and mechanisms used to achieve compliance.
- Reviewing the findings of the Auditor General regarding school district school safety policies and procedures that need improvement to ensure and demonstrate compliance with state law.
- Reviewing school hardening grant expenditures and evaluating such expenditures based on the report of the School Hardening and Harm Mitigation Workgroup, recommendations of law enforcement agencies, and the return on investment.
- Evaluating the utilization of the centralized integrated data repository by schools and its effectiveness in conducting threat assessments.
- Assessing efforts by local governments to improve communication and coordination among regional emergency communications systems.
- Investigating any failures in incident responses by local law enforcement agencies and school resource officers.
- Investigating any failures in interactions with perpetrators preceding incidents of violence.[5]

Safe-School Officer Requirement

Florida law requires each district school board and school district superintendent to partner with law enforcement and security agencies to establish or assign one or more safe-school officers at each school facility within the district by implementing one or more safe-school officer options which best meet the needs of the school district and charter schools. These options include:[6]

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[1] Section 943.687(3), F.S.
[2] Section 943.687(1), F.S.
[3] Commission, *Initial Report* (Jan. 2, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf (last visited Feb. 3, 2023).
[4] Commission, *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President,* (Nov. 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf.
[5] Section 943.687(3), F.S.
[6] Section 1006.12, F.S.

- Establishing a School Resource Officer (SRO) program through a cooperative agreement with law enforcement agencies. SROs are certified law enforcement officers and are responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a district school board and a law enforcement agency.
- Commissioning one or more school safety officers. School safety officers are certified law enforcement officers who are employed by either a law enforcement agency or by the district school board.
- Participating in the Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program.
- Contracting with a security agency to employ as a school security guard an individual who holds a Class "D" and Class "G" license and completes the same training and evaluation requirements as a school guardian.

Additionally, a private school may partner with a law enforcement agency or a security agency to establish or assign one or more safe-school officers.[7]

Safe-school officers who are sworn law enforcement officers are required to complete mental health crisis intervention training. Each safe-school officer who is not a sworn law enforcement officer is required to receive training to improve the officer's knowledge and skills necessary to respond to and de-escalate incidents on school premises.[8]

Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program

Sheriffs are required to assist district school boards, charter school governing boards, and private schools in exercising options for safe-school officers. A sheriff is required to provide access to a Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises.[9]

A sheriff who establishes a Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program is required to consult with the Department of Law Enforcement on programmatic guiding principles, practices, and resources, and certify as school guardians, school employees who:[10]

- Hold a license to carry a concealed weapon or concealed firearm.
- Complete a 144-hour training program, consisting of 12 hours of certified nationally recognized diversity training and 132 total hours of comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors.
- Pass a psychological evaluation.
- Submit to and pass an initial drug test and subsequent random drug tests.
- Successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis.

[7] Section 1006.12(18)(a), F.S.
[8] Section 1006.12(6), F.S.
[9] Section 30.15(1)(k), F.S.
[10] Section 30.15(1)(k)2., F.S.

The required 132 hours of comprehensive firearm safety and proficiency training includes:[11]

- Eighty hours of firearms instruction based on the Criminal Justice Standards and Training Commission's Law Enforcement Academy training model, which must include at least 10 percent but no more than 20 percent more rounds fired than associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.
- Sixteen hours of instruction in precision pistol.
- Eight hours of discretionary shooting instruction using state-of-the-art simulator exercises.
- Sixteen hours of instruction in active shooter or assailant scenarios.
- Eight hours of instruction in defensive tactics.
- Four hours of instruction in legal issues.

The sheriff who conducts the guardian training is required to issue a school guardian certificate to individuals who meet these requirements and maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each school guardian certified by the sheriff.[12]

There are currently 49 counties that are participating in the Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program.[13] The Florida Department of Law Enforcement (FDLE) is not directly involved with the training or tracking of persons appointed as school guardians. The responsibility is assigned to the sheriff's office in each county that certifies school guardians.[14]

The Office of Safe Schools

The OSS in the Department of Education (DOE) serves as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning.[15] The OSS, in part, must:

- Establish and update as necessary a school security risk assessment tool[16] for use by school districts and charter schools, and provide annual training on the proper assessment of physical site security and completion of the school security risk assessment tool.
- Provide ongoing professional development opportunities to school district and charter school personnel.
- Provide a coordinated and interdisciplinary approach to providing technical assistance and guidance to school districts on safety and security and recommendations to address findings identified in the school security risk assessment.[17]

[11] Section 30.15(1)(k)2.b., F.S.
[12] Section 30.15(1)(k), F.S.
[13] Florida Department of Education, *Chris Hixon, Coach Aaron Feis, & Coach Scott Beigel Guardian Program*, https://www.fldoe.org/safe-schools/guardian-program.stml (last visited Feb. 1, 2024).
[14] Florida Department of Law Enforcement, *2024 FDLE Legislative Bill Analysis for HB 1473* (Jan. 29, 2024) at 2.
[15] Section 1001.212, F.S. *See also*: Florida Department of Education, *Office of Safe Schools*, http://www.fldoe.org/safe-schools/ (last visited February 3, 2023).
[16] Section 1006.1493, F.S., provides guidelines for the Florida Safe Schools Assessment Tool (FSSAT).
[17] Section 1006.07(6)(a)4., F.S., requires a school security risk assessment at each public school using the school security risk assessment tool (FSSAT) developed by the Office of Safe Schools.

- Develop and implement a School Safety Specialist Training Program for school safety specialists.[18] The office must develop the training program based on national and state best practices on school safety and security and must include active shooter training. A school safety specialist certificate of completion must be awarded to a school safety specialist who satisfactorily completes the training.
- Review and provide recommendations on the security risk assessments.
- Monitor compliance with requirements relating to school safety by school districts and public schools.[19]
- Provide data to support the evaluation of mental health services.[20]
- Provide technical assistance to school districts and charter school governing boards for school environmental safety incident reporting.
- Award grants to schools to improve the safety and security of school buildings based on the recommendations of the security risk assessment developed.
- Disseminate, in consultation with the FDLE, to participating schools awareness and education materials on the proper use of the School Safety Awareness Program, including the consequences of knowingly submitting false information.
- Convene a School Hardening and Harm Mitigation Workgroup.[21]
- Develop a standardized, statewide behavioral threat assessment instrument for use by all public schools, including charter schools, which addresses early identification, evaluation, early intervention, and student support.
- Establish the Statewide Threat Assessment Database Workgroup.[22]

Emergency Response Policies and Procedures

District school boards must formulate and prescribe policies and procedures for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active assailant and hostage situations, and bomb threats, for all students and faculty at all district K-12 public schools.

Drills for active assailant and hostage situations must be conducted in accordance with developmentally appropriate and age-appropriate procedures. District school board policies must establish emergency response and emergency preparedness policies and procedures, including emergency notification procedures.[23] Law enforcement officers responsible for responding to the school in the event of an active assailant emergency, as determined necessary by the sheriff in

[18] Section 1006.07(6)(a), F.S., requires each district school superintendent to designate a school administrator as a school safety specialist for the district.
[19] Section 1001.212(14), F.S.
[20] Section 1001.212(7), F.S., provides such data must include, for each school, the number of involuntary examinations as defined in s. 394.455, F.S., which are initiated at the school, on school transportation, or at a school-sponsored activity and the number of children for whom an examination is initiated.
[21] Section 1001.212(11), F.S. This subsection will be repealed on June 30, 2023.
[22] Section 1001.212(13), F.S., provides that members are appointed by the DOE, to complement the work of the DOE and FDLE associated with the centralized integrated data repository and data analytics resources initiative and make recommendations regarding the development of a statewide threat assessment database. The database must allow authorized public school personnel to enter information related to any threat assessment conducted at their schools using a specified instrument, and must provide such information to authorized personnel in each school district and public school and to appropriate stakeholders.
[23] Section 1006.07(4), F.S.

coordination with the district's school safety specialist, must be physically present on campus and directly involved in the execution of active assailant emergency drills.[24]

School Safety Specialist

Each district school superintendent is required to designate a school safety specialist for the district. The school safety specialist must be a school administrator employed by the school district or a law enforcement officer employed by the sheriff's office located in the school district. The school safety specialist is responsible for the supervision and oversight for all school safety and security personnel, policies, and procedures in the school district.[25]

Each district school safety specialist is required to conduct a school security risk assessment at each public school using the Florida Safe Schools Assessment Tool (FSSAT) and report findings and subsequent school board action to the Office of Safe Schools within 30 days after the district school board meeting.[26]

Safe Schools Allocation

Each school district receives a minimum safe schools allocation in an amount provided in the General Appropriations Act. Of the remaining balance of the safe schools allocation, one-third is required to be allocated to school districts based on the most recent official Florida Crime Index provided by the Department of Law Enforcement and two-thirds based on each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment.[27]

Florida Safe Schools Assessment Tool

The FSSAT is required to be used by school officials at each school district and public school site in the state in conducting security assessments and is intended to help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise. The FSSAT is required to address certain components of school safety, such as school emergency and crisis preparedness planning.[28]

Mobile Suspicious Activity Reporting Tool

The mobile suspicious activity reporting tool (FortifyFL) allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials.[29] FortifyFL is a computer and mobile phone application free to all public and private schools in Florida. District and school-level administrators receive and must respond to

[24] Section 1006.07(4), F.S.
[25] Section 1006.07(6)(a), F.S.
[26] Section 1006.07(6)(a)4., F.S.
[27] Section 1011.62(12), F.S.
[28] Section 1006.1493, F.S.
[29] Section 943.082(1), F.S.

tips from FortifyFL. Any tips submitted via FortifyFL are sent to local school district and law enforcement officials until action is taken.[30]

District school boards are required to promote the use of the mobile suspicious activity reporting tool by advertising it on the school district website, in newsletters, on school campuses, in school publications, by installing it on all mobile devices issued to students, and by bookmarking the website on all computer devices issued to students.[31]

The reporting tool is required to notify the reporting party that:[32]

- If, following an investigation, it is determined that a person knowingly submitted a false tip through FortifyFL, the Internet protocol (IP) address of the device on which the tip was submitted will be provided to law enforcement agencies for further investigation; and
- The reporting party may be subject to criminal penalties for a false report to law enforcement authorities.[33]
- In circumstances that do not involve a false tip submitted through FortifyFL, unless the reporting party has chosen to disclose his or her identity, the report remains anonymous.

Specific Crimes Involving Threats or False Reports

Threat to throw, project, place, or discharge any destructive device

It is unlawful for any person to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person, and any person convicted thereof commits a felony of the second degree.[34]

False report concerning planting a bomb, an explosive, or a weapon of mass destruction, or concerning the use of firearms in a violent manner

It is unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction, or concerning the use of firearms in a violent manner against a person or persons. A person who commits such an act commits a felony of the second degree.[35]

When a child of any age is taken into custody by a law enforcement officer for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools that the child is alleged to have committed the delinquent act.[36]

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[30] Florida Department of Education, *FortifyFL School Safety Awareness Program*, at 1-2 (Oct. 26. 2018) *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-8397/dps-2018-157.pdf.
[31] Section 943.082(4)(b), F.S.
[32] Section 943.082(2)(c), F.S.
[33] False reports to law enforcement authorities are addressed in s. 837.05, F.S.
[34] Section 790.162, F.S.
[35] Section 790.163(1), F.S.
[36] Section 985.04(4)(a), F.S.

Drones

A drone is a powered, aerial vehicle that:
- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.[37]

A person commits a second-degree misdemeanor if the person knowingly or willfully:
- Operates a drone over a critical infrastructure facility;[38]
- Allows a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allows a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.[39]

A subsequent violation is a first-degree misdemeanor.[40]

Dual Enrollment Program

Dual enrollment is the enrollment of an eligible secondary student or home education student in a postsecondary course creditable toward both a high school diploma and a career certificate or an associate or baccalaureate degree.[41] To be eligible for dual enrollment a student must be enrolled in grades 6 through 12 in a Florida public school or in a Florida private school that is in compliance with the requirements specified in law[42] and provides a secondary curriculum pursuant to law. Dual enrollment instruction may be offered on the high school or eligible postsecondary institution campus.[43] Students who meet the eligibility requirement and who participate in dual enrollment programs are exempt from the payment of registration, tuition, and laboratory fees.[44]

[37] Section 934.50(2)(a), F.S.
[38] A critical infrastructure facility includes secure facilities that are crucial to infrastructure and enumerated in s. 330.41(2)(a), F.S.
[39] Section 330.41(4), F.S.
[40] Section 330.41(4)(b), F.S.
[41] Section 1007.271(1), F.S.
[42] Section 1002.42, F.S.
[43] Eligible postsecondary institutions include career centers under s. 1001.44, F.S., state universities under s. 1000.21(8), F.S., Florida College System institutions under s. 1000.21(5), F.S., and private colleges and universities that are not for profit, are accredited by a regional or national accrediting agency recognized by the United States Department of Education, and confer degrees, pursuant to s. 1011.61(1)(i), F.S.
[44] Section 1007.271, F.S. However, s. 1011.62(1)(i), F.S., specifies that the exemption from tuition and fees does not apply to dual enrollment at an eligible private postsecondary institution.

III. Effect of Proposed Changes:

The bill modifies school safety requirements for public and private schools. The bill:

- Requires schools and sheriffs to report guardian information to the Florida Department of Law Enforcement (FDLE).
- Establishes a statewide school safety inspection process with regular inspections on a 3-year cycle, reporting, and compliance verification.
- Requires district school boards to adopt a progressive discipline policy for school safety violations.
- Authorizes the Marjory Stoneman Douglas High School Public Safety Commission (commission) to research best practices in school safety and update legislative recommendations.
- Requires the Florida Safe Schools Assessment Tool (FSSAT) to specifically address best practices for locked access points and safe spaces in schools.
- Provides for criminal penalties against a person who knowingly or willfully operates a drone over a K-12 school or allows a drone to make contact with a school.
- Modifies existing guardian training requirements to require a guardian candidate to receive training to improve the school guardian's knowledge and skills necessary to respond to and de-escalate incidents on school premises.
- Includes, subject to appropriation, grants for local law enforcement to assist private schools with security assessments and threat management programs.
- Enables certification as a guardian without initial training for certain qualified individuals.
- Requires specific annual instruction to be provided to students regarding FortifyFL.
- Requires the district school superintendent to notify the postsecondary institution at which a student is dually enrolled of certain allegations of crimes by the student.

Marjory Stoneman Douglas High School Public Safety Commission

The bill modifies s. 943.687, F.S., to require the commission to research best practices in school safety and make additional legislative recommendations if necessary.

Safe-School Officer Requirements

The bill amends s. 1006.12, F.S., to require that agreements between a school district and a law enforcement agency for the provision of school resource officers (SRO) in district schools must identify the entity responsible for maintaining records relating to SRO training.

Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program

The bill modifies s. 30.15, F.S., to clarify that private schools seeking to participate in the guardian program are responsible for costs associated with background screening in addition to costs associated with training. However, the bill authorizes a sheriff to waive training and background screening costs for a private school participating in the school guardian program. Funds provided to the sheriff by the Department of Education (DOE) for the school guardian program may not be used to subsidize any costs that have been waived by the sheriff.

The bill provides that an individual certified and in good standing under the Florida Criminal Justice Standards and Training Commission, and who is otherwise qualified to serve as a guardian, is exempt from the 144-hour training requirement prior to certification as a guardian. The bill authorizes a sheriff to issue a school guardian certificate to such individuals.

The bill requires a school guardian to complete 12 hours of training to improve the guardian's knowledge and skills necessary to respond to and de-escalate incidents on school premises, and deletes a requirement for a school guardian to complete 12 hours of certified nationally recognized diversity training. A conforming change is made in s. 1006.12, F.S.

The bill creates a framework for reporting and maintaining information about school guardians certified by sheriffs or appointed by the employer that employs a certified school guardian to serve as a school guardian, including a district school board, a charter school governing board, a security agency which provides school guardian services, or a private school. Specifically, the bill requires:

- By September 1, 2024, and thereafter within 30 days after certification by the sheriff, each sheriff to report to the FDLE the name, date of birth, and certification date of each school guardian certified by the sheriff.
- By February 1 and September 1 of each year, each employer of an appointed school guardian to report to the FDLE the name, date of birth, and initial and end-of-appointment dates, as applicable, of each appointed or separated school guardian which has not been reported.
- The FDLE to maintain a list of each person appointed as a school guardian and provide the list to any school safety specialist upon request. The list must include the name, certification date, and any appointment or end-of-appointment date of each school guardian, including the name of the employer or last employer of the school guardian. The bill requires the FDLE to remove from the list any person whose training has expired.
- Each sheriff to report on a quarterly basis to the FDLE the schedule for upcoming school guardian trainings, including the dates of the training, the training locations, a contact person to register for the training, and the class capacity.
- The FDLE to publish on its website a list of the upcoming school guardian trainings and update such list quarterly.
- By March 1 and October 1 of each year, the FDLE to notify the DOE of any employer of a school guardian which has not complied with the reporting requirements.

The bill provides that an employer that is out of compliance with the reporting requirements may not operate a school guardian program until the employer comes into compliance by reporting the information for all school guardians the employer has appointed. Similarly, the bill provides that a sheriff who is out of compliance with the reporting requirements may not receive reimbursement from the DOE for school guardian trainings until the sheriff comes into compliance by reporting the information for all school guardians whom the sheriff has certified.

The Office of Safe Schools

The bill modifies s. 1001.212, F.S., to require the Office of Safe Schools (OSS), by August 1, 2024, to develop and adopt a Florida school safety compliance inspection report to document compliance or noncompliance with school safety requirements and adherence to established school safety best practices to evaluate the safety, security, and emergency response of schools.

Upon the adoption of the report and upon any revisions to the report, the OSS is required to provide a blank copy of the report to each district school superintendent and charter school administrator. The bill requires the OSS to annually provide school safety specialists with training on the report, and any revisions thereof, and the expectations associated with the required inspections.

The bill authorizes the OSS to conduct inspections, which may include unannounced inspections, of all public schools, including charter schools. The bill requires the OSS to inspect every public school in this state during 3-year inspection cycles and, within 3 school days after the inspection, provide a copy of the completed Florida school safety compliance inspection report, including any photographs or other evidence of noncompliance, to the superintendent, the school safety specialist, and the school principal or charter school administrator.

The bill requires the school safety specialist to provide the OSS with written notice of the manner in which any noncompliance has been remediated within 5 school days after receipt of the report and the OSS to re-inspect any school with documented deficiencies within 6 months.

The bill requires the OSS to provide a bonus in an amount determined in the General Appropriations Act, at the conclusion of the initial inspection conducted during the school year, to the school principal or charter school administrator of each school that complies with all school safety requirements.

The bill requires the OSS to identify instructional personnel and administrative personnel who knowingly violate school safety requirements to the district school superintendent or charter school administrator, as applicable, for disciplinary action if such action has not already been commenced by the district school superintendent or charter school administrator upon receipt of the Florida school safety compliance inspection report. The district school superintendent or charter school administrator is required by the bill to notify the OSS of the outcome of the disciplinary proceedings within 3 school days after the conclusion of the proceedings.

The bill requires the OSS to maintain a record of any administrative personnel or instructional personnel who violated school safety requirements, and authorizes the use such information when making any subsequent determinations of an alleged violation by the same person.

The bill requires the OSS, by December 1, 2024, to evaluate the methodology for the Safe Schools Allocation and, if necessary, make recommendations for an alternate methodology to distribute the remaining balance of the Safe Schools Allocation to address school safety personnel, technology, and facility cost needs and each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment.

Emergency Response Policies and Procedures

The bill amends s. 1006.07, F.S., to require each public school, including charter schools, to maintain a record that is accessible on each campus or by request of the OSS of all current and prior school year drills conducted pursuant to this subsection, including the names of law enforcement personnel present on campus for each active assailant emergency drill.

The bill requires each district school board and charter school governing board to adopt a progressive discipline policy for addressing instructional personnel and any administrative personnel who knowingly violate school safety requirements.

School Safety Specialist

The bill modifies the duties of the district school safety specialist. The bill requires the school safety specialist's review of district policies and procedures to be made annually and in conjunction with the district school superintendent. Additionally, the bill requires the school safety specialist, during the first quarter of every school year, to report to the district school board in a public meeting the number of schools inspected during the preceding calendar year and the number and percentage of schools in compliance during the initial inspection and re-inspection. The bill provides that the school safety specialist's report on school security risk assessment findings to the OSS must be made through the district school superintendent.

Florida Safe Schools Assessment Tool

The bill modifies s. 1006.1493, F.S., to specify that the physical security measures addressed by the FSSAT must include, but are not limited to, security for gates or other access points that restrict ingress to or egress from a school campus, a school facility, and rooms and areas within the facility, and the identification and demarcation of safe spaces.

The bill requires, for the 2024-2025 fiscal year and subject to legislative appropriation, the FDLE to provide grants to sheriffs' offices and law enforcement agencies to:

- Conduct physical site security assessments for and provide reports to private schools with recommendations on improving such schools' infrastructure safety and security;
- Assist private schools in developing active assailant response protocols and develop and implement training relating to active assailant responses, including active assailant response drills for students and school personnel; and
- Consult with or provide guidance to private schools in implementing a threat management program similar to the statewide behavioral threat management operational process for public schools.

The bill requires the FDLE to develop a site security assessment form for use by sheriffs' offices and law enforcement agencies and make the form available, including any subsequent revisions, to private schools. The bill authorizes the grants awarded to be used for personnel costs and to purchase software and other items necessary to assist private schools.

The bill authorizes the FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds. Grants are required by the bill to be awarded no later than October 1, 2024.

Mobile Suspicious Activity Reporting Tool

The bill modifies s. 943.082, F.S., to require each district school board and charter school governing board to ensure instruction is provided to students on the use of FortifyFL within the first five days of each school year. The instruction must be age and developmentally appropriate

and include the consequences for, when school or school personnel's property, school transportation, or a school-sponsored activity is involved, making:

- A threat to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.
- A false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction, or concerning the use of firearms in a violent manner against a person or persons.

Drones

The bill amends s. 330.41, F.S., to prohibit a person from knowingly or willfully:

- Operating a drone over a public or private school serving students in any grade from voluntary prekindergarten through grade 12; or
- Allowing a drone to make contact with a school, including any person or object on the premises of or within a school facility.

Under the bill, a person who violates such a prohibition commits a second degree misdemeanor for a first violation or a first degree misdemeanor for a second or subsequent violation.

If a person commits a violation and records video of the school, including any person or object on the premises of or within the school facility, the person commits a first degree misdemeanor for a first violation, or a third degree felony for a second or subsequent violation.

The prohibition against operating a drone over a school does not apply to a:

- Person operating a drone with the prior written consent of the school principal, district school board, superintendent, or school governing board; or
- Law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency.

Dual Enrollment Program

The bill modifies s. 985.04, F.S., to address the reporting of crimes in the case of a child who is alleged to have committed an offense that would have been a felony if committed by an adult. If the child is a dually enrolled student at a postsecondary institution, the bill requires the district school superintendent, or his or her designee, to notify the postsecondary institution at which the student is dually enrolled within 1 business day of being notified by law enforcement of the delinquent act by the student.

The bill takes effect July 1, 2024.

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:

The bonuses to school principals for school safety performance are subject to appropriation.

The grants to local law enforcement agencies to assist private schools with school safety improvements are subject to appropriation.

The additional requirements imposed by the bill on the Office of Safe Schools, particularly the required inspections of schools, may have an indeterminate fiscal impact on the Office of Safe Schools.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 30.15, 330.41, 943.082, 943.687, 985.04, 1001.212, 1006.07, 1006.12, and 1006.1493.

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 Criminal Justice on February 6, 2024:
The committee substitute modifies the guardian training program administered by local sheriffs. The committee substitute:

- Modifies existing guardian training requirements to require a guardian candidate to receive training to improve the school guardian's knowledge and skills necessary to respond to and de-escalate incidents on school premises instead of the required diversity training.
- Specifies that a private school receiving guardian training is responsible for all screening-related costs of the program for the private school.
- Specifies that the reimbursement to a sheriff for specified costs associated with administering the guardian program training to public school employees applies only to public school employees.
- Authorizes a sheriff to waive the training and screening-related costs of a private school for a school guardian program.
- Authorizes a person to be certified as a guardian without the initial training requirements if the person is:
  - Certified and in good standing under the Florida Criminal Justice Standards and Training Commission;
  - Meets the minimum qualifications required for employment as a corrections officer; and
  - Deemed by the sheriff to be otherwise qualified.

The committee substitute creates a framework for local sheriffs and schools to report school guardian information. The committee substitute requires:

- Sheriffs and employers of appointed school guardians to report guardian information to the Florida Department of Law Enforcement (FDLE).
- The FDLE to maintain a list of school guardians and appointment status and remove from the list guardians with expired training.
- The sheriff to quarterly report, and the FDLE to publish, all upcoming guardian trainings and contact information.
- The FDLE to notify the Department of Education (DOE) of any schools that fail to comply with the specific guardian reporting requirements.

The committee substitute establishes a statewide process to verify compliance with school safety requirements. The committee substitute requires the Office of Safe Schools (OSS) to:

- Develop a Florida school safety compliance inspection report and provide training on the form to district safety specialists.
- Inspect all schools on a 3-year cycle.
- Provide inspection results to the superintendent, safety specialist, and principal within 3 school days.
- Re-inspect any deficient school within 6 months.
- Provide a bonus to each school principal with no safety violations.
- Refer personnel for school safety violations to the school board for disciplinary action.
- Maintain a record of personnel who violated school safety requirements to use in subsequent disciplinary determinations.
- Evaluate the methodology for the Safe Schools Allocation and, if necessary, make recommendations for an alternate methodology to distribute the Safe Schools Allocation to address school safety personnel, technology, and facility cost needs and each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment.

The committee substitute requires the district school safety specialist to:

- Provide OSS with a plan for remediation of violations in schools within 5 school days of notice.
- Report to the district school board in a public meeting in the first quarter of the school year the number of schools inspected during the preceding calendar year and the number and percentage of schools in compliance during the initial inspection and re-inspection.

The committee substitute requires:

- Each district school board and charter school governing board to adopt a progressive discipline policy for addressing school safety violations.
- The Florida Safe Schools Assessment Tool to address locked door requirements and the identification and demarcation of classroom safe spaces.
- Subject to appropriation, the FDLE to provide grants, awarded by 10/1/24, to sheriffs and law enforcement agencies to conduct security assessments and consultations for private schools and assist in implementing threat management programs and for personnel costs and to purchase software and other items necessary to assist private schools.
- Each school to maintain a record of all drills in the prior and current school year and the law enforcement personnel who were on campus during the drill that is accessible to the Office of Safe Schools.
- The superintendent to notify the OSS of the outcome of disciplinary action for school safety violations within 3 school days after the conclusion of the proceedings.

The committee substitute also:

- Provides broader authority for the MSD Commission to research best school safety practices and make additional legislative recommendations.
- Modifies the provision of the bill that requires superintendents to report allegations of certain crimes by dual enrollment students within 24 hours to authorize the superintendent to appoint a designee and provides one business day instead of 24 hours to provide the notification.
- Modifies the provision of the bill that requires principals to ensure certain instruction on the FortifyFL app occurs to instead require school boards to ensure the instruction occurs within the first 5 days of each school year.
- Provides criminal penalties against a person who knowingly or willfully operates a drone over a K-12 school or allows a drone to make contact with a school. The committee substitute provides exemptions for law enforcement and a person with school board consent.
- Requires agreements between a district school board and a law enforcement agency governing the employment of school resource officers to identify the entity responsible for maintaining records related to training.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Calatayud

591-02975-24 20241356c1

A bill to be entitled

An act relating to school safety; amending s. 30.15, F.S.; providing that sheriffs are responsible for screening-related costs for school guardian programs; authorizing sheriffs to waive training and screening-related costs for a private school for a school guardian program; providing conditions for an individual to be certified as a school guardian; revising specified training requirements for school guardians; defining the term "employer"; requiring sheriffs and employers of school guardians to report certain information to the Department of Law Enforcement by specified dates; requiring the Department of Law Enforcement to maintain a list of school guardians and provide the list to any School Safety Specialist upon request; providing requirements for the list; requiring each sheriff to report on a quarterly basis to the Department of Law Enforcement the schedule for school guardian trainings; requiring the Department of Law Enforcement to publish a list of the upcoming trainings on its website; requiring the Department of Law Enforcement to notify the Department of Education by specified dates of any employer of a school guardian who has not complied with certain requirements; prohibiting an employer who is not in compliance from operating a school guardian program; prohibiting a sheriff who is not in compliance with certain reporting requirements from receiving certain reimbursements; making technical changes; authorizing

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the Department of Law Enforcement to adopt rules; amending s. 330.41, F.S.; prohibiting the operation of a drone over public and private schools and recording video of such schools; providing criminal penalties; providing exemptions; amending s. 943.082, F.S.; requiring each district school board and charter school governing board to ensure that instruction on the mobile suspicious activity reporting tool is provided to students; providing requirements for the instruction; amending s. 943.687, F.S.; requiring the Marjory Stoneman Douglas High School Public Safety Commission to research best practices in school safety and make additional legislative recommendations if necessary; amending s. 985.04, F.S.; requiring superintendents or their designees to notify, within a specified timeframe, the chief of police or the public safety director of a postsecondary institution in which a student is dual enrolled if such student commits certain offenses; amending s. 1001.212, F.S.; requiring the Office of Safe Schools by a specified date to develop and adopt a Florida school safety compliance inspection report to document compliance or noncompliance with school safety requirements; requiring the office to provide a blank copy of the report to each district school superintendent and charter school administrator; requiring the office to provide school safety specialists with trainings on the report; authorizing the office to conduct inspections of public schools and charter schools;

requiring the office to conduct inspections of every public school within a specified timeframe; requiring the office to provide a copy of the inspection report to specified entities within a specified timeframe after an inspection; requiring a school safety specialist to provide the office with written notice of the manner in which noncompliance has been remediated within a specified timeframe; requiring the office to reinspect schools with documented deficiencies within a specified timeframe; requiring the office to provide a bonus to a school principal or charter school administrator of a school that complies with all school safety requirements; requiring the office to identify any instructional personnel and administrative personnel who knowingly violate school safety requirements for disciplinary action; requiring a district school superintendent or charter school administrator to notify the office of the outcome of the disciplinary proceedings within a specified timeframe; requiring the office to maintain a record of any administrative personnel or instructional personnel who violate school safety requirements; requiring the office to evaluate the methodology for the Safe Schools Allocation by a specified date; amending s. 1006.07, F.S.; requiring public schools, including charter schools, to maintain a record that is accessible to the Office of Safe Schools of specified drills conducted; requiring the school safety specialist to report to the district school

board in a public meeting the number of schools inspected during the preceding calendar year; requiring each district school board and charter school governing board to adopt a progressive discipline policy for addressing any instructional personnel or administrative personnel who knowingly violate school safety requirements; amending s. 1006.12, F.S.; requiring that agreements between a district school board and a law enforcement agency include a certain provision; deleting a requirement for certain safe-school officers to receive specified training; amending s. 1006.1493, F.S.; specifying physical security measures that must be addressed by the Florida Safe Schools Assessment Tool; subject to legislative appropriation, requiring the Department of Law Enforcement to provide grants to sheriffs' offices and law enforcement agencies to conduct physical site security assessments for and provide reports to private schools; requiring sheriffs' offices and law enforcement agencies to provide private schools with recommendations on improving infrastructure safety and security; requiring sheriffs' offices and law enforcement agencies to assist private schools in developing active assailant responses; requiring the Department of Law Enforcement to develop a site security assessment form for use by sheriffs' offices and law enforcement agencies; requiring the Department of Law Enforcement to provide such form to private schools; authorizing the use of grants for specified

purposes; requiring the Department of Law Enforcement to establish requirements for awarding such grants; requiring that grants be awarded by a specified date; providing an effective date.

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

Section 1. Paragraph (k) of subsection (1) of section 30.15, Florida Statutes, is amended to read:

30.15 Powers, duties, and obligations.—

(1) Sheriffs, in their respective counties, in person or by deputy, shall:

(k) Assist district school boards and charter school governing boards in complying with, or private schools in exercising options in, s. 1006.12. A sheriff must, at a minimum, provide access to a Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises, as required under this paragraph. Persons certified as school guardians pursuant to this paragraph have no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident.

1.a. If a local school board has voted by a majority to implement a guardian program, the sheriff in that county must ~~shall~~ establish a guardian program to provide training, pursuant to subparagraph 2., to school district, charter school, or private school employees, either directly or through a contract with another sheriff's office that has established a guardian program.

b. A charter school governing board in a school district that has not voted, or has declined, to implement a guardian program may request the sheriff in the county to establish a guardian program for the purpose of training the charter school employees. If the county sheriff denies the request, the charter school governing board may contract with a sheriff that has established a guardian program to provide such training. The charter school governing board shall ~~must~~ notify the superintendent and the sheriff in the charter school's county of the contract before ~~prior to~~ its execution.

c. A private school in a school district that has not voted, or has declined, to implement a guardian program may request that the sheriff in the county of the private school establish a guardian program for the purpose of training private school employees. If the county sheriff denies the request, the private school may contract with a sheriff from another county who has established a guardian program to provide such training. The private school shall ~~must~~ notify the sheriff in the private school's county of the contract with a sheriff from another county before its execution. The private school is responsible for all training and screening-related costs for a school guardian program. The sheriff providing such training shall ~~must~~ ensure that any moneys paid by a private school are not commingled with any funds provided by the state to the sheriff as reimbursement for screening-related and training-related costs of any school district or charter school employee.

d. The training program required in sub-subparagraph 2.b. is a standardized statewide curriculum, and each sheriff providing such training shall adhere to the course of

instruction specified in that sub-subparagraph. This subparagraph does not prohibit a sheriff from providing additional training. A school guardian who has completed the training program required in sub-subparagraph 2.b. is ~~may~~ not ~~be~~ required to attend another sheriff's training program pursuant to that sub-subparagraph unless there has been at least a 1-year break in his or her appointment ~~employment~~ as a guardian.

e. The sheriff conducting the training pursuant to subparagraph 2. for school district and charter school employees must ~~will~~ be reimbursed for screening-related and training-related costs and for providing a one-time stipend of $500 to each school guardian who participates in the school guardian program.

f. The sheriff may waive the training and screening-related costs for a private school for a school guardian program. Funds provided pursuant to sub-subparagraph e. may not be used to subsidize any costs that have been waived by the sheriff.

g. A person who is certified by and in good standing under the Florida Criminal Justice Standards and Training Commission, who meets the qualifications established in s. 943.13, and who is otherwise qualified for the position of a school guardian may be certified as a school guardian by the sheriff without completing the training requirements of sub-subparagraph 2.b. However, a person certified as a school guardian under this sub-subparagraph must meet the requirements of sub-subparagraphs 2.c., d., and e.

2. A sheriff who establishes a program shall consult with the Department of Law Enforcement on programmatic guiding principles, practices, and resources, and shall certify as

school guardians, without the power of arrest, school employees, as specified in s. 1006.12(3), who:

a. Hold a valid license issued under s. 790.06.

b. Complete a 144-hour training program, consisting of 12 hours of training to improve the school guardian's knowledge and skills necessary to respond to and de-escalate incidents on school premises ~~certified nationally recognized diversity training~~ and 132 total hours of comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors, which must include:

(I) Eighty hours of firearms instruction based on the Criminal Justice Standards and Training Commission's Law Enforcement Academy training model, which must include at least 10 percent but no more than 20 percent more rounds fired than associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.

(II) Sixteen hours of instruction in precision pistol.

(III) Eight hours of discretionary shooting instruction using state-of-the-art simulator exercises.

(IV) Sixteen hours of instruction in active shooter or assailant scenarios.

(V) Eight hours of instruction in defensive tactics.

(VI) Four hours of instruction in legal issues.

c. Pass a psychological evaluation administered by a psychologist licensed under chapter 490 and designated by the Department of Law Enforcement and submit the results of the evaluation to the sheriff's office. The Department of Law Enforcement is authorized to provide the sheriff's office with mental health and substance abuse data for compliance with this

paragraph.

d. Submit to and pass an initial drug test and subsequent random drug tests in accordance with the requirements of s. 112.0455 and the sheriff's office.

e. Successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis.

3.a. As used in this subparagraph, the term "employer" means the person who employs a certified school guardian to serve as a school guardian and may refer to a district school board, a charter school governing board, a security agency as defined in s. 493.6101(18) which provides school guardian services, or a private school as defined in s. 1002.01(3).

b. By September 1, 2024, and thereafter within 30 days after certification by the sheriff, each sheriff shall report to the Department of Law Enforcement the name, date of birth, and certification date of each school guardian certified by the sheriff.

c. By February 1 and September 1 of each year, each employer of an appointed school guardian shall report to the Department of Law Enforcement the name, date of birth, and initial and end-of-appointment dates, as applicable, of each appointed or separated school guardian which has not been reported.

d. The Department of Law Enforcement shall maintain a list of each person appointed as a school guardian in this state and shall provide the list to any school safety specialist upon request. The list must include the name, certification date, and any appointment or end-of-appointment date of each school

guardian, including the name of the employer or last employer of the school guardian. The Department of Law Enforcement shall remove from the list any person whose training has expired pursuant to sub-subparagraph 1.d.

e. Each sheriff shall report on a quarterly basis to the Department of Law Enforcement the schedule for upcoming school guardian trainings, including the dates of the training, the training locations, a contact person to register for the training, and the class capacity. The Department of Law Enforcement shall publish on its website a list of the upcoming school guardian trainings. The Department of Law Enforcement shall update such list quarterly.

f. By March 1 and October 1 of each year, the Department of Law Enforcement shall notify the Department of Education of any employer of a school guardian which has not complied with the reporting requirements of this subparagraph.

g. An employer that is out of compliance with the reporting requirements of this subparagraph may not operate a school guardian program until the employer comes into compliance by reporting the information for all school guardians the employer has appointed.

h. A sheriff who is out of compliance with the reporting requirements of this subparagraph may not receive reimbursement from the Department of Education for school guardian trainings until the sheriff comes into compliance by reporting the information for all school guardians whom the sheriff has certified.

i. The Department of Law Enforcement may adopt rules to implement the requirements of this subparagraph, including

additional required reporting information only as necessary to uniquely identify each school guardian reported.

The sheriff who conducts the guardian training or waives the training requirements for a person under sub-subparagraph 1.g. shall issue a school guardian certificate to persons ~~individuals~~ who meet the requirements of this section to the satisfaction of the sheriff, and shall maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each school guardian certified by the sheriff. An individual ~~who is~~ certified under this paragraph may serve as a school guardian under s. 1006.12(3) only if he or she is appointed by the applicable school district superintendent, charter school principal, or private school head of school.

Section 2. Present subsection (5) of section 330.41, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section, to read:

330.41 Unmanned Aircraft Systems Act.—

(5) PROTECTION OF SCHOOLS.—

(a) A person may not knowingly or willfully:

1. Operate a drone over a public or private school serving students in any grade from voluntary prekindergarten through grade 12; or

2. Allow a drone to make contact with a school, including any person or object on the premises of or within the school facility.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s.

775.082 or s. 775.083. A person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who violates paragraph (a) and records video of the school, including any person or object on the premises of or within the school facility, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who commits a second or subsequent violation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) This subsection does not apply to actions identified in paragraph (a) which are committed by:

1. A person acting under the prior written consent of the school principal, district school board, superintendent, or school governing board.

2. A law enforcement agency that is in compliance with s. 934.50, or a person under contract with or otherwise acting under the direction of such law enforcement agency.

Section 3. Paragraph (b) of subsection (4) of section 943.082, Florida Statutes, is amended to read:

943.082 School Safety Awareness Program.—

(4)

(b) The district school board shall promote the use of the mobile suspicious activity reporting tool by advertising it on the school district website, in newsletters, on school campuses, and in school publications, by installing it on all mobile devices issued to students, and by bookmarking the website on all computer devices issued to students. Within the first 5 days of each school year, each district school board and charter

school governing board must ensure that instruction on the use of the mobile suspicious activity reporting tool known as FortifyFL is provided to students. The instruction must be age and developmentally appropriate and include the consequences for making a threat or false report as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity.

Section 4. Paragraph (h) is added to subsection (3) of section 943.687, Florida Statutes, to read:

943.687 Marjory Stoneman Douglas High School Public Safety Commission.—

(3) The commission shall monitor implementation of school safety legislation by:

(h) Researching best practices in school safety and making additional legislative recommendations if necessary.

Section 5. Paragraph (a) of subsection (4) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

(4)(a) Notwithstanding any other provision of this section, when a child of any age is taken into custody by a law enforcement officer for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools that the child is alleged to have committed the delinquent act. If the child is a dual enrolled student at a postsecondary institution, the superintendent of schools, or his or her designee, must notify the chief of police or the public safety director of the postsecondary institution at which the student is dual enrolled within 1 business day after receiving the

initial notification.

Section 6. Subsection (14) of section 1001.212, Florida Statutes, is amended, and subsection (17) is added to that section, to read:

1001.212 Office of Safe Schools.—There is created in the Department of Education the Office of Safe Schools. The office is fully accountable to the Commissioner of Education. The office shall serve as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. The office shall:

(14)(a) By August 1, 2024, develop and adopt a Florida school safety compliance inspection report to document compliance or noncompliance with school safety requirements mandated by law or rule and adherence to established school safety best practices to evaluate the safety, security, and emergency response of the school. Upon the adoption of the report and upon any revisions to the report, the office shall provide a blank copy of the report to each district school superintendent and charter school administrator. The office shall annually provide school safety specialists with training on the report, and any revisions thereof, and the expectations associated with the inspections required under this paragraph.

(b) Monitor compliance with requirements relating to school safety by school districts and public schools, including charter schools. The office shall report incidents of noncompliance to the commissioner pursuant to s. 1001.11(9) and the state board pursuant to s. 1008.32 and other requirements of law, as

appropriate. The office may conduct inspections, which may include unannounced inspections, of all public schools, including charter schools. The office shall inspect every public school in this state during 3-year inspection cycles. Within 3 school days after the inspection, the office shall provide a copy of the completed Florida school safety compliance inspection report, including any photographs or other evidence of noncompliance, to the superintendent, the school safety specialist, and the school principal or charter school administrator. The school safety specialist shall provide the office with written notice of the manner in which any noncompliance has been remediated within 5 school days after receipt of the report. The office shall reinspect any school with documented deficiencies within 6 months.

(c) Provide a bonus in an amount determined in the General Appropriations Act, at the conclusion of the initial inspection conducted during the school year, to the school principal or charter school administrator of each school that complies with all school safety requirements.

(d)1. Identify any instructional personnel as defined in s. 1012.01(2) and any administrative personnel as defined in s. 1012.01(3) who knowingly violate school safety requirements of law or rule adopted by the State Board of Education to the district school superintendent or charter school administrator, as applicable, for disciplinary action if such action has not already been commenced by the district school superintendent or charter school administrator upon receipt of the Florida school safety compliance inspection report. The district school superintendent or charter school administrator shall notify the

office of the outcome of the disciplinary proceedings within 3 school days after the conclusion of the proceedings.

2. Maintain a record of any administrative personnel or instructional personnel who violated school safety requirements, and may use such information when making any subsequent determinations of an alleged violation by the same person.

(17) By December 1, 2024, evaluate the methodology for the Safe Schools Allocation in s. 1011.62(12) and, if necessary, make recommendations for an alternate methodology to distribute the remaining balance of the Safe Schools Allocation as indicated in s. 1011.62(12) to address school safety personnel, technology, and facility cost needs and each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment.

Section 7. Paragraph (a) of subsection (4) and paragraph (a) of subsection (6) of section 1006.07, Florida Statutes, are amended, and paragraph (f) is added to subsection (6) of that section, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

(a) Formulate and prescribe policies and procedures, in consultation with the appropriate public safety agencies, for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active assailant and

hostage situations, and bomb threats, for all students and faculty at all public schools of the district composed of grades K-12, pursuant to State Board of Education rules. Drills for active assailant and hostage situations must be conducted in accordance with developmentally appropriate and age-appropriate procedures, as specified in State Board of Education rules. Law enforcement officers responsible for responding to the school in the event of an active assailant emergency, as determined necessary by the sheriff in coordination with the district's school safety specialist, must be physically present on campus and directly involved in the execution of active assailant emergency drills. School districts must notify law enforcement officers at least 24 hours before conducting an active assailant emergency drill at which such law enforcement officers are expected to attend. Each public school, including charter schools, shall maintain a record that is accessible on each campus or by request of the Office of Safe Schools of all current and prior school year drills conducted pursuant to this subsection, including the names of law enforcement personnel present on campus for each active assailant emergency drill. District school board policies must include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law, State Board of Education rules, and fire protection codes and may provide accommodations for drills conducted by exceptional student education centers. District school boards shall establish emergency response and emergency preparedness policies and procedures that include, but are not limited to, identifying the individuals responsible for

contacting the primary emergency response agency and the emergency response agency responsible for notifying the school district for each type of emergency. The State Board of Education shall refer to recommendations provided in reports published pursuant to s. 943.687 for guidance and, by August 1, 2023, consult with state and local constituencies to adopt rules applicable to the requirements of this subsection which, at a minimum, define the terms "emergency drill," "active threat," and "after-action report" and establish minimum emergency drill policies and procedures related to the timing, frequency, participation, training, notification, accommodations, and responses to threat situations by incident type, school level, school type, and student and school characteristics. The rules must require all types of emergency drills to be conducted no less frequently than on an annual school year basis.

(6) SAFETY AND SECURITY BEST PRACTICES.—Each district school superintendent shall establish policies and procedures for the prevention of violence on school grounds, including the assessment of and intervention with individuals whose behavior poses a threat to the safety of the school community.

(a) *School safety specialist.*—Each district school superintendent shall designate a school safety specialist for the district. The school safety specialist must be a school administrator employed by the school district or a law enforcement officer employed by the sheriff's office located in the school district. Any school safety specialist designated from the sheriff's office must first be authorized and approved by the sheriff employing the law enforcement officer. Any school safety specialist designated from the sheriff's office remains

the employee of the office for purposes of compensation, insurance, workers' compensation, and other benefits authorized by law for a law enforcement officer employed by the sheriff's office. The sheriff and the school superintendent may determine by agreement the reimbursement for such costs, or may share the costs, associated with employment of the law enforcement officer as a school safety specialist. The school safety specialist must earn a certificate of completion of the school safety specialist training provided by the Office of Safe Schools within 1 year after appointment and is responsible for the supervision and oversight for all school safety and security personnel, policies, and procedures in the school district. The school safety specialist shall:

1. In conjunction with the district school superintendent, annually review school district policies and procedures for compliance with state law and rules, including the district's timely and accurate submission of school environmental safety incident reports to the department pursuant to s. 1001.212(8). Annually, during the first quarter of every school year, the school safety specialist shall report to the district school board in a public meeting the number of schools inspected during the preceding calendar year and the number and percentage of schools in compliance during the initial inspection and reinspection.

2. Provide the necessary training and resources to students and school district staff in matters relating to youth mental health awareness and assistance; emergency procedures, including active shooter training; and school safety and security.

3. Serve as the school district liaison with local public

safety agencies and national, state, and community agencies and organizations in matters of school safety and security.

4. In collaboration with the appropriate public safety agencies, as that term is defined in s. 365.171, by October 1 of each year, conduct a school security risk assessment at each public school using the Florida Safe Schools Assessment Tool developed by the Office of Safe Schools pursuant to s. 1006.1493. Based on the assessment findings, the district's school safety specialist shall provide recommendations to the district school superintendent and the district school board which identify strategies and activities that the district school board should implement in order to address the findings and improve school safety and security. Each district school board must receive such findings and the school safety specialist's recommendations at a publicly noticed district school board meeting to provide the public an opportunity to hear the district school board members discuss and take action on the findings and recommendations. Each school safety specialist, through the district school superintendent, shall report such findings and school board action to the Office of Safe Schools within 30 days after the district school board meeting.

(f) *Progressive discipline policy.*—Each district school board and charter school governing board shall adopt a progressive discipline policy for addressing any instructional personnel as defined in s. 1012.01(2) and any administrative personnel as defined in s. 1012.01(3) who knowingly violate school safety requirements.

Section 8. Paragraph (b) of subsection (1) and subsections

(3) and (6) of section 1006.12, Florida Statutes, are amended to read:

1006.12 Safe-school officers at each public school.—For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options available under this section. The school district may implement any combination of the options in subsections (1)-(4) to best meet the needs of the school district and charter schools.

(1) SCHOOL RESOURCE OFFICER.—A school district may establish school resource officer programs through a cooperative agreement with law enforcement agencies.

(b) School resource officers shall abide by district school board policies and shall consult with and coordinate activities through the school principal, but shall be responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a district school board and a law enforcement agency. The agreements must identify the entity responsible for maintaining records related to training. Activities conducted by the school resource officer which are part of the regular instructional program of the school shall be under the direction of the school principal.

(3) SCHOOL GUARDIAN.—

(a) At the school district's or the charter school

governing board's discretion, as applicable, pursuant to s. 30.15, a school district or charter school governing board may participate in the Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program to meet the requirement of establishing a safe-school officer. The following individuals may serve as a school guardian, in support of school-sanctioned activities for purposes of s. 790.115, upon satisfactory completion of the requirements under s. 30.15(1)(k) and certification by a sheriff:

1.~~(a)~~ A school district employee or personnel, as defined under s. 1012.01, or a charter school employee, as provided under s. 1002.33(12)(a), who volunteers to serve as a school guardian in addition to his or her official job duties; or

2.~~(b)~~ An employee of a school district or a charter school who is hired for the specific purpose of serving as a school guardian.

(6) CRISIS INTERVENTION TRAINING.—

~~(a)~~ Each safe-school officer who is also a sworn law enforcement officer shall complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training must improve the officer's knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.

~~(b) Each safe-school officer who is not a sworn law enforcement officer shall receive training to improve the officer's knowledge and skills necessary to respond to and de-escalate incidents on school premises.~~

If a district school board, through its adopted policies, procedures, or actions, denies a charter school access to any safe-school officer options pursuant to this section, the school district must assign a school resource officer or school safety officer to the charter school. Under such circumstances, the charter school's share of the costs of the school resource officer or school safety officer may not exceed the safe school allocation funds provided to the charter school pursuant to s. 1011.62(12) and shall be retained by the school district.

Section 9. Paragraph (a) of subsection (2) of section 1006.1493, Florida Statutes, is amended to read:

1006.1493 Florida Safe Schools Assessment Tool.—

(2) The FSSAT must help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise, pursuant to the security risk assessment requirements of s. 1006.07(6).

(a) At a minimum, the FSSAT must address all of the following components:

1. School emergency and crisis preparedness planning;

2. Security, crime, and violence prevention policies and procedures;

3. Physical security measures, which include, but are not limited to, security for gates or other access points that restrict ingress to or egress from a school campus, a school facility, and rooms and areas within the facility, and the identification and demarcation of safe spaces;

4. Professional development training needs;

5. An examination of support service roles in school

safety, security, and emergency planning;

6. School security and school police staffing, operational practices, and related services;

7. School and community collaboration on school safety;

8. Policies and procedures for school officials to prepare for and respond to natural and manmade disasters, including family reunification plans to reunite students and employees with their families after a school is closed or unexpectedly evacuated due to such disasters; and

9. A return on investment analysis of the recommended physical security controls.

Section 10. For the 2024-2025 fiscal year and subject to legislative appropriation, the Department of Law Enforcement shall provide grants to sheriffs' offices and law enforcement agencies to conduct physical site security assessments for and provide reports to private schools with recommendations on improving such schools' infrastructure safety and security; to assist private schools in developing active assailant response protocols and develop and implement training relating to active assailant responses, including active assailant response drills for students and school personnel; and to consult with or provide guidance to private schools in implementing a threat management program similar to the process required under s. 1001.212(12), Florida Statutes, for public schools. The Department of Law Enforcement shall develop a site security assessment form for use by sheriffs' offices and law enforcement agencies and make the form available, including any subsequent revisions, to private schools. Grants awarded under this section may be used for personnel costs and to purchase software and

other items necessary to assist private schools. The Department of Law Enforcement may establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds under this section. Grants must be awarded no later than October 1, 2024.

Section 11. This act shall take effect July 1, 2024.

412K

The Florida Senate

APPEARANCE RECORD

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

2-15-24
Meeting Date

Fiscal Policy
Committee

1356
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Mazzola

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Orlando FL 32809
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: Florida PTA

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. 2020-2022JointRules.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 Fiscal Policy

BILL:	SB 1512
INTRODUCER:	Senator Brodeur
SUBJECT:	Controlled Substances
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaughan	Stokes	CJ	**Favorable**
2.	Atchley	Harkness	ACJ	**Favorable**
3.	Vaughan	Yeatman	FP	**Favorable**

I. Summary:

SB 1512 amends s. 893.13, F.S., to add tianeptine to the list of Schedule I controlled substances.

"Tianeptine" is an antidepressant agent with a novel neurochemical profile. It increases serotonin (5-hydroxytryptamine; 5-HT) uptake in the brain (in contrast with most antidepressant agents) and reduces stress-induced atrophy of neuronal dendrites.[1]

The bill may have a positive, indeterminate impact on prison admissions. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Tianeptine or "gas station heroin" is an opioid, like heroin and morphine.[2] Currently, tianeptine is not listed as a controlled substance on the Florida Controlled Substance Schedules. Tianeptine is used as a prescription drug in some European, Asian, and Latin American countries, but it is not approved as a drug in the United States.[3]

On September 20, 2023, Florida's Attorney General issued Emergency Rule ER23-1, immediately placing tianeptine as a Schedule I Substance in order to curtail its abuse by Florida's children, young adults, and others.

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[11] National Library of Medicine, *Tianeptine: a review of its use in depressive disorders*, Wagstaff, A.J., Ormrod, D., Spencer, C.M., available at, https://pubmed.ncbi.nlm.nih.gov/11463130/, (last visited January 14, 2024).

[2] Cleveland Clinic, *The Dangers of Gas Station Heroin*, available at, https://health.clevelandclinic.org/gas-station-heroin-tianeptine, (last visited January 16, 2024).

[3] U.S. Food and Drug Administration, *Tianeptine in Dietary Supplements*, available at, https://www.fda.gov/food/dietary-supplement-ingredient-directory/tianeptine-dietary-supplements (Last visited January 24, 2024).

The emergency rule states:

> (1) Under the authority of Section 893.035, F.S., the following substance is hereby added to Schedule I, subsection 893.03(1)(a), F.S.: TIANEPTINE (7-((3-chloro-6-methyl-5,5-dioxido-6,11-dihydrodibenzo[c,f][1,2]thiazepin-11-yl)amino)heptanoic acid.
>
> (2) All provisions of Chapter 893, F.S., applicable to controlled substances listed in Schedule I shall be applicable to the substances listed in subsection (1) above.

The Attorney General found that these circumstances presented an immediate and imminent hazard to the public health, safety, and welfare which requires emergency action. In addition, the Attorney General has found that the above-mentioned compound meets the statutory criteria for placement as a controlled substance in Schedule I, s. 893.03(1)(a), F.S. The emergency rule and the temporary scheduling of tianeptine expire on June 30, 2024.[4]

Florida Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"[5] 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 (s. 893.03(1), F.S.) 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.
- Schedule II substances (s. 893.03(2), F.S.) 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.
- Schedule III substances (s. 893.03(3), F.S.) 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.
- Schedule IV substances (s. 893.03(4), F.S.) 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.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse

[4] Department of Legal Affairs 2ER23-1, Addition of Tianeptine to Schedule 1, available at, https://www.flrules.org/gateway/ruleNo.asp?id=2ER23-1 (last visited January 24, 2024).
[5] 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.

of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

Controlled Substance Analog

A "controlled substance analog" is defined in s. 893.0356(2)(a), F.S., 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 of s. 893.03, F.S.; 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 of s. 893.03, F.S.

Controlled Substance Offenses Under ss. 893.13 and 893.135, F.S.

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance.[6] The penalty for violating s. 893.13, F.S., generally depends on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred.

Section 893.13(1), F.S., prohibits a person from selling, manufacturing,[7] or delivering,[8] or possessing with the intent to sell, manufacture, or deliver a controlled substance. The penalty for selling a controlled substance varies depending on several factors, including the type and amount of the substance sold, and the location where the sale takes place. Generally, sale of a controlled substance is punishable as either a second degree felony[9] or third degree felony.[10]

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

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[6] *See e.g.,* s. 893.13(1)(a) and (b) and (6), F.S.

[7] "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

- A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.
- A practitioner, or his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale. Section 893.02(15)(a), F.S.

[8] "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. Section 893.02(6), F.S.

[9] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.

[10] Section 893.13(1), F.S. A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

Drug trafficking occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into the state, or is in actual or constructive possession of, a specified quantity of a controlled substance.[11] Generally, a drug trafficking offense is punishable as a first degree felony.[12,13]Section 893.135, F.S., outlines threshold amounts of the applicable controlled substance for each trafficking offense. All drug trafficking offenses are subject to mandatory minimum sentences and heightened fines, which are determined by the threshold amounts.

III. Effect of Proposed Changes:

The bill amends s. 893.13, F.S., to add tianeptine to the list of Schedule I controlled substances.

"Tianeptine" is an antidepressant agent with a novel neurochemical profile. It increases serotonin (5-hydroxytryptamine; 5-HT) uptake in the brain (in contrast with most antidepressant agents) and reduces stress-induced atrophy of neuronal dendrites.[14]

The bill amends ss. 893.131 and 893.135, F.S., to make conforming changes.

The bill takes effect July 1, 2024.

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.

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[11] Florida law criminalizes trafficking in cannabis; cocaine; illegal drugs, which include morphine, opium, hydromorphone, or any salt derivative, isomer, or salt of an isomer thereof, including heroin; hydrocodone, oxycodone; fentanyl; phencyclidine; methaqualone; amphetamine; flunitrazepam; gamma-hydroxybutryic (GHB); gamma-butryolactone (GBL); 1,4-Butanediol; phenethylamines; lysergic acid diethylamide (LSD); synthetic cannabinoids; and n-benzyl phenethylamines. Section 893.135, F.S.

[12]A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S

[13] Trafficking in certain controlled substances can be a capital offense under specified circumstances. See, e.g., s. 893.135(1)(h)2., F.S. (Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine . . . who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony).

[1414] National Library of Medicine, *Tianeptine: a review of its use in depressive disorders,* Wagstaff, A.J., Ormrod, D., Spencer, C.M., available at, https://pubmed.ncbi.nlm.nih.gov/11463130/, (last visited January 14, 2024).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

A preliminary Criminal Justice Impact Conference (CJIC) analysis concluded that the bill may have a positive indeterminate prison bed impact due to the potential increase in the number of offenders going to prison for drug offenses under s. 893.13, F.S.[15]

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.03, 893.13, 893.131, and 893.135.

VIII. 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.

[15] Office of Economic and Demographic Research *SB 1512 Preliminary Estimate*, (on file with the Senate Committee on Criminal Justice).

By Senator Brodeur

10-00914A-24 20241512__

A bill to be entitled

An act relating to controlled substances; amending s. 893.03, F.S.; adding tianeptine to the list of Schedule I controlled substances; amending ss. 893.13, 893.131, and 893.135, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in

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another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.
2. Acetylmethadol.
3. Allylprodine.
4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
5. Alphamethadol.
6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
7. Alpha-methylthiofentanyl.
8. Alphameprodine.
9. Benzethidine.
10. Benzylfentanyl.
11. Betacetylmethadol.
12. Beta-hydroxyfentanyl.
13. Beta-hydroxy-3-methylfentanyl.
14. Betameprodine.
15. Betamethadol.
16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.

21. Difenoxin.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.
36. Desmethylprodine (1-Methyl-4-Phenyl-4-Propionoxypiperidine).
37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. Morpheridine.
40. Noracymethadol.
41. Norlevorphanol.
42. Normethadone.
43. Norpipanone.
44. Para-Fluorofentanyl.
45. Phenadoxone.
46. Phenampromide.
47. Phenomorphan.

48. Phenoperidine.
49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine).
50. Piritramide.
51. Proheptazine.
52. Properidine.
53. Propiram.
54. Racemoramide.
55. Thenylfentanyl.
56. Thiofentanyl.
57. Tianeptine.
58. Tilidine.
59.~~58.~~ Trimeperidine.
60.~~59.~~ Acetylfentanyl.
61.~~60.~~ Butyrylfentanyl.
62.~~61.~~ Beta-Hydroxythiofentanyl.
63.~~62.~~ Fentanyl derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a 4-anilidopiperidine structure:
a. With or without substitution at the carbonyl of the aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl, methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl, dihydrofuranyl, benzyl moiety, or rings containing heteroatoms sulfur, oxygen, or nitrogen;

b. With or without substitution at the piperidine amino moiety with a phenethyl, benzyl, alkylaryl (including heteroaromatics), alkyltetrazolyl ring, or an alkyl or carbomethoxy group, whether or not further substituted in the ring or group;

c. With or without substitution or addition to the piperdine ring to any extent with one or more methyl, carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester groups;

d. With or without substitution of one or more hydrogen atoms for halogens, or methyl, alkyl, or methoxy groups, in the aromatic ring of the anilide moiety;

e. With or without substitution at the alpha or beta position of the piperidine ring with alkyl, hydroxyl, or methoxy groups;

f. With or without substitution of the benzene ring of the anilide moiety for an aromatic heterocycle; and

g. With or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring;

excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil; including, but not limited to:

(I) Acetyl-alpha-methylfentanyl.

(II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

(III) Alpha-methylthiofentanyl.

(IV) Benzylfentanyl.

(V) Beta-hydroxyfentanyl.

(VI) Beta-hydroxy-3-methylfentanyl.

(VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).

(VIII) 3-Methylthiofentanyl.

(IX) Para-Fluorofentanyl.

(X) Thenylfentanyl or Thienyl fentanyl.

(XI) Thiofentanyl.

(XII) Acetylfentanyl.

(XIII) Butyrylfentanyl.

(XIV) Beta-Hydroxythiofentanyl.

(XV) Lofentanil.

(XVI) Ocfentanil.

(XVII) Ohmfentanyl.

(XVIII) Benzodioxolefentanyl.

(XIX) Furanyl fentanyl.

(XX) Pentanoyl fentanyl.

(XXI) Cyclopentyl fentanyl.

(XXII) Isobutyryl fentanyl.

(XXIII) Remifentanil.

64.~~63.~~ Nitazene derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a benzimidazole ring with an ethylamine substitution at the 1-position and a benzyl ring substitution at the 2-position structure:

a. With or without substitution on the benzimidazole ring with alkyl, alkoxy, carboalkoxy, amino, nitro, or aryl groups, or halogens;

b. With or without substitution at the ethylamine amino moiety with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system;

c. With or without inclusion of the ethylamine amino moiety in a cyclic structure;

d. With or without substitution of the benzyl ring; or

e. With or without replacement of the benzyl ring with an aromatic ring, including, but not limited to:

(I) Butonitazene.

(II) Clonitazene.

(III) Etodesnitazene.

(IV) Etonitazene.

(V) Flunitazene.

(VI) Isotodesnitazene.

(VII) Isotonitazene.

(VIII) Metodesnitazene.

(IX) Metonitazene.

(X) Nitazene.

(XI) N-Desethyl Etonitazene.

(XII) N-Desethyl Isotonitazene.

(XIII) N-Piperidino Etonitazene.

(XIV) N-Pyrrolidino Etonitazene.

(XV) Protonitazene.

Section 2. Paragraph (i) of subsection (1) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(1)

(i) Except as authorized by this chapter, a person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must be sentenced to a mandatory minimum term of imprisonment of 3 years, if:

1. The person sells, manufactures, or delivers, or possesses with intent to sell, manufacture, or deliver, any of the following:

a. Alfentanil, as described in s. 893.03(2)(b)1.;

b. Carfentanil, as described in s. 893.03(2)(b)6.;

c. Fentanyl, as described in s. 893.03(2)(b)9.;

d. Sufentanil, as described in s. 893.03(2)(b)30.;

e. A fentanyl derivative, as described in s. 893.03(1)(a)63. ~~s. 893.03(1)(a)62.~~;

f. A controlled substance analog, as described in s. 893.0356, of any substance described in sub-subparagraphs a.-e.; or

g. A mixture containing any substance described in sub-subparagraphs a.-f.; and

2. The substance or mixture listed in subparagraph 1. is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:

a. Resembles the trade dress of a branded food product, consumer food product, or logo food product;

b. Incorporates an actual or fake registered copyright, service mark, or trademark;

c. Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or

d. Contains a cartoon character imprint.

Section 3. Paragraph (a) of subsection (2) of section 893.131, Florida Statutes, is amended to read:

893.131 Distribution of controlled substances resulting in overdose or serious bodily injury.—

(2)(a) Except as provided in paragraph (b), a person 18 years of age or older who unlawfully distributes:

1. Heroin, as described in s. 893.03(1)(b)11.;

2. Alfentanil, as described in s. 893.03(2)(b)1.;

3. Carfentanil, as described in s. 893.03(2)(b)6.;

4. Fentanyl, as described in s. 893.03(2)(b)9.;

5. Sufentanil, as described in s. 893.03(2)(b)30.;

6. Fentanyl derivatives, as described in s. 893.03(1)(a)63. ~~s. 893.03(1)(a)62.~~;

7. A controlled substance analog, as described in s. 893.0356, of any substance specified in subparagraphs 1.-6.; or

8. A mixture containing any substance specified in subparagraphs 1.-7.,

and an overdose or serious bodily injury of the user results, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, when such substance or mixture is proven to have caused or been a substantial factor in causing the overdose or serious bodily injury of the user.

Section 4. Paragraph (c) of subsection (1) of section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as

described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 50 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 100 grams or more, but less than 300 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 300 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.q., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)30.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)63. ~~s. 893.03(1)(a)62.~~;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in dangerous fentanyl or fentanyl analogues," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and shall be ordered to pay a fine of $50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 20 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

c. A person 18 years of age or older who violates sub-subparagraph a. by knowingly selling or delivering to a minor at least 4 grams of a substance or mixture listed in sub-subparagraph a. shall be sentenced to a mandatory minimum term of not less than 25 years and not exceeding life imprisonment, and shall be ordered to pay a fine of $1 million if the substance or mixture listed in sub-subparagraph a. is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:

(I) Resembles the trade dress of a branded food product, consumer food product, or logo food product;

(II) Incorporates an actual or fake registered copyright,

service mark, or trademark;

(III) Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or

(IV) Contains a cartoon character imprint.

5. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A

person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Section 5. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

FISCAL POLICY
Committee

SB 1512
Bill Number or Topic

Amendment Barcode (if applicable)

Name LIBBY GUZZO

Phone 850 245 0155

Address CAPITOL - PL01
Street

Email LIBBY.GUZZO

TLH FL 32399
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/CS/SB 1604
INTRODUCER:	Fiscal Policy Committee; Criminal Justice Committee; and Senator Book
SUBJECT:	Digital Voyeurism
DATE:	February 16, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	**Fav/CS**
2.	Parker	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1604 amends s. 810.145, F.S., renaming the offense from "video voyeurism" to "digital voyeurism."

The bill defines "position of authority or trust" to mean a position occupied by a person 18 years of age or older who is a relative, caregiver, coach, employer, or other person who, by reason of his or her relationship with the victim, is able to exercise undue influence over him or her or exploit his or her trust.

The bill amends the definition of "broadcast," to include visual recordings, and provides that "family or household member," has the same meaning as in s. 741.28, F.S.

The bill provides that a person who is under 19 years of age and who commits the offense of digital voyeurism commits a first degree misdemeanor.[1] A person who is 19 years of age or older who commits the offense of digital voyeurism commits a third degree felony.[2]

A person who commits the offense of digital voyeurism dissemination or commercial digital voyeurism dissemination commits a third degree felony.

[1] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine pursuant to s. 775.082 and s. 775.083, F.S.

[2] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine pursuant to s. 775.082, s. 775.083, or s. 775.084, F.S.

Each instance of the secret viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of this section is a separate offense for which a separate penalty is authorized.

The bill provides that if a person who is 19 years of age or older is convicted of committing any violation of s. 810.145, F.S., relating to digital voyeurism, and is a family or household member of the victim, or holds a position of authority or trust with the victim, the court must reclassify the felony to the next higher degree as follows:

- A third degree felony is reclassified as a second degree felony.
- A second degree felony is reclassified as a first degree felony.

The bill ranks felony crimes of digital voyeurism, digital voyeurism dissemination, and commercial digital voyeurism in the offense severity ranking chart.

For purposes of sentencing under ch. 921, F.S., and incentive gain-time eligibility under ch. 944, F.S., a felony that is reclassified is ranked one level above the ranking in s. 921.0022, F.S.

This bill may have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective on October 1, 2024.

II. Present Situation:

Voyeurism

A person commits voyeurism[3] when he or she, with lewd, lascivious, or indecent intent:

- Secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy; or
- Secretly observes another person's intimate areas[4] in which the person has a reasonable expectation of privacy, when the other person is located in a public or private dwelling, structure, or conveyance.

A first or second voyeurism offense is punishable as a first degree misdemeanor[5] and a third or subsequent offense is punishable as a third degree felony.[6]

Video Voyeurism

A person commits video voyeurism if that person, for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally:

[3] Section 810.14, F.S.
[4] Section 810.14(1)(b), F.S., "intimate area" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.
[5] *Supra* Note 1.
[6] *Supra* Note 2.

- Uses or installs an imaging device[7] to secretly view, broadcast,[8] or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body,[9] at a place and time when that person has a reasonable expectation of privacy;[10]
- Permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or
- Uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

Video Voyeurism Dissemination

A person commits the offense of video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner described in this section, intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.[11]

Commercial Video Voyeurism Dissemination

A person commits the offense of commercial video voyeurism dissemination if that person:
- Knowing or having reason to believe that an image was created in a manner described in this section, sells the image for consideration to another person;[12] or
- Having created the image in a manner described in this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.[13]

Video Voyeurism Penalties

Generally, a person who commits video voyeurism, video voyeurism dissemination, or commercial digital voyeurism dissemination under s. 810.145, F.S., commits a:
- First degree misdemeanor if he or she is under 19 years of age.[14]
- Third degree felony if he or she is 19 years of age or older.[15]

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[7] Section 810.145(1)(b), F.S., "Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.
[8] Section 810.145(1)(a), F.S., "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person.
[9] Section 810.145(1)(d), F.S., "Privately exposing the body" means exposing a sexual organ.
[10] Section 810.145(1)(c), F.S., "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.
[11] Section 810.145(3), F.S.
[12] Section 810.145(4)(a), F.S.
[13] Section 810.145(4)(b), F.S.
[14] Section 810.145(6)(a), F.S.
[15] Section 810.145(6)(b), F.S.

- Second degree felony[16] if he or she commits a violation and has previously been convicted of or adjudicated delinquent for any violation of s. 810.145, F.S., regardless of his or her age.[17]

A person commits a second degree felony if he or she commits any video voyeurism offense and is:

- 18 years of age or older and commits the offense against a child younger than 16 years of age whose welfare he or she is responsible for, regardless of whether he or she knows or has reason to know the child's age;[18]
- 18 years of age or older, and employed at a private school as defined in s. 1002.01, F.S.; a school as defined in s. 1003.01, F.S.; or a voluntary prekindergarten education program as described in s. 1002.53(3)(a), (b), or (c), F.S., and commits the offense against a student of the school;[19] or
- 24 years of age or older and commits the offense against a child younger than 16 years of age, regardless of whether he or she knows or has reason to know the child's age.[20]

Current Rankings for Video Voyeurism Offenses

Current OSRC rankings for felony offenses under s. 810.145, F.S., are as follows:

- Video voyeurism under s. 810.145(2)-(4), F.S., is unranked and as a third degree felony defaults to a Level 1 offense if committed by a person 19 years of age or older;
- A second or subsequent conviction for video voyeurism under s. 810.145(2)-(4), F.S., is unranked and as a second degree felony defaults to a Level 4 offense, regardless of the offender's age;[21] and
- Video voyeurism committed by a specified person against a specified child or student under s. 810.145(8)(a), F.S., is unranked and as a second degree felony defaults to a Level 4 offense, for a first time offense, and is ranked as a Level 6 offense if the offender has a prior violation of any video voyeurism offense.

III. Effect of Proposed Changes:

This bill amends s. 810.145, F.S., renaming the offense from "video voyeurism" to "digital voyeurism."

The bill defines "position of authority or trust" to mean a position occupied by a person 18 years of age or older who is a relative, caregiver, coach, employer, or other person who, by reason of his or her relationship with the victim, is able to exercise undue influence over him or her or exploit his or her trust.

The bill amends the definition of "broadcast," to include visual recordings, and provides that "family or household member," has the same meaning as in s. 741.28, F.S.

[16] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine pursuant to s. 775.082, s. 775.083, or s. 775.084, F.S.
[17] Section 810.145(7), F.S.
[18] Section 810.145(8)(a)1., F.S.
[19] Section 810.145(8)(a)2, F.S.
[20] Section 810.145(8)(a)3., F.S.
[21] Section 810.145(7), F.S.

The bill provides that a person who is under 19 years of age and who commits the offense of digital voyeurism commits a first degree misdemeanor. A person who is 19 years of age or older who commits the offense of digital voyeurism commits a third degree felony.

A person who commits the offense of digital voyeurism dissemination or commercial digital voyeurism dissemination commits a third degree felony.

Each instance of the secret viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of this section is a separate offense for which a separate penalty is authorized.

The bill provides that if a person who is 19 years of age or older is convicted of committing any violation of s. 810.145, F.S., relating to digital voyeurism and is a family or household member of the victim, or holds a position of authority or trust with the victim, the court shall reclassify the felony to the next higher degree as follows:

- A felony of the third degree is reclassified as a felony of the second degree.
- A felony of the second degree is reclassified as a felony of the first degree.

For purposes of sentencing under ch. 921, F.S., and incentive gain-time eligibility under ch. 944, F.S., a felony that is reclassified is ranked one level above the ranking in s. 921.0022, F.S.

The bill ranks crimes of digital voyeurism, digital voyeurism dissemination, and commercial digital voyeurism in the offense severity ranking chart.

Florida Statute	Felony Degree	Offense	Ranking
810.145(2)(c)	3rd	Digital voyeurism; 19 years of age or older	Level 3
810.145(3)(b)	3rd	Digital voyeurism dissemination	Level 4
840.145(4)(c)	3rd	Commercial digital voyeurism dissemination	Level 5
810.145(7)(a)	2nd	Digital voyeurism; 2nd or subsequent	Level 5
810.145(8)(a)	2nd	Digital voyeurism certain minor victims	Level 5
810.145 (8)(b)	2nd	Digital voyeurism certain minor victims; 2nd or subsequent	Level 6

The bill is effective on October 1, 2024.

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:

The Florida Department of Law Enforcement (FDLE) will be required to update all documentation and training that lists "video" voyeurism or s. 810.145(8), F.S., as a qualifying offense for sexual offender/predator registration. Those costs would be absorbed by the department.[22]

FDLE in its legislative analysis reports a federal impact. Florida has been found to have substantially implemented the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Act. This determination is made by the Department of Justice's Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office. As a state that has substantially implemented SORNA, the Florida registry is prioritized in funding consideration for the yearly SMART grant, which goes directly to the registry and supports staffing,

[22] FDLE, 2024 Legislative Bill Analysis for HB 1389 (January 22, 2024), p. 3 (on file with the Senate Committee on Criminal Justice).

equipment, publication, training, and other registry operations. The registry has received over $2 million in SMART grants over the last 10 years. Additionally, those states that do not substantially implement SORNA see a 10 percent reduction in the Edward Byrne Memorial Justice Assistance Grant (JAG) received by state agencies in Florida. In 2023, Florida received more than $12 million in state JAG funds.[23]

SORNA requires sexual offender registration of those convicted for an offense of video voyeurism of a minor, which is currently covered under s. 810.145(8), F.S. Striking subsection (8) means that future convictions for video voyeurism of a minor will no longer qualify for sexual offender registration. This could impact Florida's substantial implementation of SORNA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 810.145, 921.0022, 397.417, 435.04, 456.074, 775.0862, 775.15, 775.21, 943.0435, 943.0584, 944.606, 944.607, and 1012.315, F.S.

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 Fiscal Policy on February 15, 2024:
The committee substitute:

- Clarifies that each instance of the secret viewing of a person in violation of this section or the broadcasting, recording, disseminating, distributing, or transferring of an image or recording made is a separate offense for which a separate penalty is authorized.

CS by Criminal Justice on February 6, 2024:
The committee substitute:

- Redefines the definition of "position of authority or trust."
- Revises the penalties for committing digital voyeurism, digital voyeurism dissemination and commercial digital voyeurism dissemination, and ranks the felony offenses in the offense severity ranking chart.
- Provides that each violation of the statute is a separate offense for which a separate penalty is authorized.

[23] *Id*. at pg. 4.

- Provides enhanced penalties when the offender is a family member, household member or holds a position of authority or trust with the victim.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Book) recommended the following:

Senate Amendment

Delete line 124
and insert:
(6) Each instance of the secret viewing of a person in violation of subsection (2) or the broadcasting, recording,

By the Committee on Criminal Justice; and Senator Book

591-02968-24 20241604c1

A bill to be entitled

An act relating to digital voyeurism; amending s. 810.145, F.S.; providing definitions; redesignating the offense of "video voyeurism" as "digital voyeurism"; revising the elements of the offense; providing criminal penalties; providing reduced criminal penalties for certain violations by persons who are under 19 years of age; redesignating the offense of "video voyeurism dissemination" as "digital voyeurism dissemination"; revising the elements of the offense; providing criminal penalties; specifying that each instance of certain violations is a separate offense; providing for reclassification of certain violations by certain persons; amending s. 921.0022, F.S.; ranking offenses on the offense severity ranking chart of the Criminal Punishment Code; amending ss. 397.417, 435.04, 456.074, 775.15, 943.0584, and 1012.315, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 810.145, Florida Statutes, is amended to read:

810.145 Digital ~~Video~~ voyeurism.—

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

(a) "Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

591-02968-24 20241604c1

(b) "Family or household member" has the same meaning as in s. 741.28.

(c)~~(b)~~ "Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

(d) "Position of authority or trust" means a position occupied by a person 18 years of age or older who is a relative, caregiver, coach, employer, or other person who, by reason of his or her relationship with the victim, is able to exercise undue influence over him or her or exploit his or her trust.

(e)~~(d)~~ "Privately exposing the body" means exposing a sexual organ.

(f)~~(c)~~ "~~Place and time when a person has a~~ Reasonable expectation of privacy" means circumstances under which ~~a place and time when~~ a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.

(2)(a) A person commits the offense of digital ~~video~~ voyeurism if that person:

1.~~(a)~~ For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading, exploiting, or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent,

who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;

2.~~(b)~~ For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or

3.~~(c)~~ For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

(b) A person who is under 19 years of age and who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who is 19 years of age or older and who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) A person commits the offense of digital ~~video~~ voyeurism dissemination if that person, knowing or having reason to believe that an image or recording was created in a manner described in subsection (2) ~~this section~~, intentionally disseminates, distributes, or transfers the image or recording to another person for the purpose of the amusement,

entertainment, sexual arousal, or gratification of any person, ~~or profit,~~ or for the purpose of degrading, exploiting, or abusing another person.

(b) A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person commits the offense of commercial digital ~~video~~ voyeurism dissemination if that person:

(a) Knowing or having reason to believe that an image or recording was created in a manner described in subsection (2) ~~this section~~, sells the image or recording for consideration to another person; or

(b) Having created the image or recording in a manner described in subsection (2) ~~this section~~, disseminates, distributes, or transfers the image or recording to another person for that person to sell the image or recording to others.

(c) A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) This section does not apply to any:

(a) Law enforcement agency conducting surveillance for a law enforcement purpose;

(b) Security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security for the premises;

(c) Video surveillance device that is installed in such a manner that the presence of the device is clearly and immediately obvious; or

(d) Dissemination, distribution, or transfer of images or

recordings subject to this section by a provider of an electronic communication service as defined in 18 U.S.C. s. 2510(15), or a provider of a remote computing service as defined in 18 U.S.C. s. 2711(2). For purposes of this section, the exceptions to the definition of "electronic communication" set forth in 18 U.S.C. s. 2510(12)(a), (b), (c), and (d) do not apply, but are included within the definition of the term.

(6) Each instance of the viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of subsection (2) is a separate offense for which a separate penalty is authorized. ~~Except as provided in subsections (7) and (8):~~

~~(a) A person who is under 19 years of age and who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(b) A person who is 19 years of age or older and who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(7)(a) A person who violates this section and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If a person who is 19 years or age or older commits a violation of this section and is a family or household member of the victim or holds a position of authority or trust with the victim, the court shall reclassify the felony to the next higher degree as follows:

1. A felony of the third degree is reclassified as a felony of the second degree.

2. A felony of the second degree is reclassified as a felony of the first degree.

For purposes of sentencing under chapter 921 and incentive gain-time eligibility under chapter 944, a felony that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 of the felony offense committed.

(8)(a) A person who is:

1. Eighteen years of age or older who is responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, and who commits an offense under this section against that child;

2. Eighteen years of age or older who is employed at a private school as defined in s. 1002.01; a school as defined in s. 1003.01; or a voluntary prekindergarten education program as described in s. 1002.53(3)(a), (b), or (c) and who commits an offense under this section against a student of the private school, school, or voluntary prekindergarten education program; or

3. Twenty-four years of age or older who commits an offense under this section against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates this subsection and who has previously been convicted of or adjudicated delinquent for any

violation of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) For purposes of this section, a person has previously been convicted of or adjudicated delinquent for a violation of this section if the violation resulted in a conviction that was sentenced separately, or an adjudication of delinquency entered separately, before ~~prior to~~ the current offense.

Section 2. Paragraphs (c), (d), (e), and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.

376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.

400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
794.053	3rd	Lewd or lascivious written solicitation of a person 16 or 17 years of age by a person 24 years of age or older.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
810.145(2)(c)	3rd	Digital voyeurism; 19 years of age or older.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.

812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
812.081(2)	3rd	Theft of a trade secret.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.

817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.
817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent disfigurement, or permanent disability.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without consent.

838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot.
870.01(4)	3rd	Inciting a riot.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9.,

		(2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by

		chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

918.13(1)	3rd	Tampering with or fabricating physical evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer or associated person of a dealer of securities to register.
784.031	3rd	Battery by strangulation.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at

		custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
794.051(1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
806.135	2nd	Destroying or demolishing a memorial or historic property.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
810.145(3)(b)	3rd	Digital voyeurism dissemination.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4. & 6.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other

		than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.5695(3)(c)	3rd	Exploitation of person 65 years of age or older, value less than $10,000.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
836.14(2)	3rd	Person who commits theft of a sexually explicit image with intent to promote it.
836.14(3)	3rd	Person who willfully possesses a sexually explicit image with

		certain knowledge, intent, and purpose.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail

		for felony (bond estreature or bond jumping).
843.19(2)	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
870.01(3)	2nd	Aggravated rioting.
870.01(5)	2nd	Aggravated inciting a riot.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.

914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving

			away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
333			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
334			
	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
335			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
336			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
337			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
338			
	440.381(2)	3rd	Submission of false,

			misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
339			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
340			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
341			
	790.01(3)	3rd	Unlawful carrying of a concealed firearm.
342			
	790.162	2nd	Threat to throw or discharge destructive device.
343			
	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
344			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
345			
	790.23	2nd	Felons in possession of firearms, ammunition, or

		electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
810.145(4)(c)	3rd	Commercial digital voyeurism dissemination.
810.145(7)(a)	2nd	Digital voyeurism; 2nd or subsequent offense.
810.145(8)(a)	2nd	Digital voyeurism; certain minor victims.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more

		but less than $50,000.
812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at $750 or more and one or more specified acts.
812.015(8)(f)	3rd	Retail theft; multiple thefts within specified period.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.081(3)	2nd	Trafficking in trade secrets.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or

		false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which

		includes child pornography.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
836.14(4)	2nd	Person who willfully promotes for financial gain a sexually explicit image of an identifiable person without consent.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01(1)	3rd	Resist officer with violence to person; resist arrest with violence.

847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1.,

		(2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver

		cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure,

		without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.

784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon

		on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.

800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Digital ~~Video~~ voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(2)(c)5.	3rd	Grand theft; third degree; firearm.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $750 or more; second or

		subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is $3,000 or more; coordination of others.
812.015(9)(d)	2nd	Retail theft; multiple thefts within specified period.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
817.5695(3)(b)	2nd	Exploitation of person 65 years of age or older, value $10,000 or more, but less than $50,000.
825.102(1)	3rd	Abuse of an elderly person or

		disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
828.126(3)	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an

		act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
893.131	2nd	Distribution of controlled substances resulting in overdose or serious bodily injury.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a

		capital felony.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

Section 3. Paragraph (e) of subsection (4) of section 397.417, Florida Statutes, is amended to read:

397.417 Peer specialists.—

(4) BACKGROUND SCREENING.—

(e) The background screening conducted under this subsection must ensure that a peer specialist has not been arrested for and is awaiting final disposition of, found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following state laws or similar laws of another jurisdiction:

1. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

2. Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

3. Section 409.920, relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.

4. Section 415.111, relating to abuse, neglect, or exploitation of vulnerable adults.

5. Any offense that constitutes domestic violence as defined in s. 741.28.

6. Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.

7. Section 782.04, relating to murder.

8. Section 782.07, relating to manslaughter; aggravated manslaughter of an elderly person or a disabled adult; aggravated manslaughter of a child; or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

9. Section 782.071, relating to vehicular homicide.

10. Section 782.09, relating to killing an unborn child by injury to the mother.

11. Chapter 784, relating to assault, battery, and culpable

negligence, if the offense was a felony.

12. Section 787.01, relating to kidnapping.

13. Section 787.02, relating to false imprisonment.

14. Section 787.025, relating to luring or enticing a child.

15. Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

16. Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

17. Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

18. Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.

19. Section 794.011, relating to sexual battery.

20. Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

21. Section 794.05, relating to unlawful sexual activity with certain minors.

22. Section 794.08, relating to female genital mutilation.

23. Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.

24. Section 798.02, relating to lewd and lascivious

behavior.

25. Chapter 800, relating to lewdness and indecent exposure.

26. Section 806.01, relating to arson.

27. Section 810.02, relating to burglary, if the offense was a felony of the first degree.

28. Section 810.14, relating to voyeurism, if the offense was a felony.

29. Section 810.145, relating to digital ~~video~~ voyeurism, if the offense was a felony.

30. Section 812.13, relating to robbery.

31. Section 812.131, relating to robbery by sudden snatching.

32. Section 812.133, relating to carjacking.

33. Section 812.135, relating to home-invasion robbery.

34. Section 817.034, relating to communications fraud, if the offense was a felony of the first degree.

35. Section 817.234, relating to false and fraudulent insurance claims, if the offense was a felony of the first or second degree.

36. Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.

37. Section 817.505, relating to patient brokering.

38. Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.

39. Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or a disabled adult.

40. Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or a disabled person.

41. Section 825.103, relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.

42. Section 826.04, relating to incest.

43. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

44. Section 827.04, relating to contributing to the delinquency or dependency of a child.

45. Former s. 827.05, relating to negligent treatment of children.

46. Section 827.071, relating to sexual performance by a child.

47. Section 831.30, relating to fraud in obtaining medicinal drugs.

48. Section 831.31, relating to the sale; manufacture; delivery; or possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.

49. Section 843.01, relating to resisting arrest with violence.

50. Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.

51. Section 843.12, relating to aiding in an escape.

52. Section 843.13, relating to aiding in the escape of juvenile inmates of correctional institutions.

53. Chapter 847, relating to obscenity.

54. Section 874.05, relating to encouraging or recruiting another to join a criminal gang.

55. Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

56. Section 895.03, relating to racketeering and collection of unlawful debts.

57. Section 896.101, relating to the Florida Money Laundering Act.

58. Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

59. Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

60. Section 944.40, relating to escape.

61. Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

62. Section 944.47, relating to introduction of contraband into a correctional institution.

63. Section 985.701, relating to sexual misconduct in juvenile justice programs.

64. Section 985.711, relating to introduction of contraband into a detention facility.

Section 4. Paragraph (ff) of subsection (2) of section 435.04, Florida Statutes, as amended by section 2 of chapter 2023-220, Laws of Florida, is amended to read:

435.04 Level 2 screening standards.—

(2) The security background investigations under this section must ensure that persons subject to this section have

not been arrested for and are awaiting final disposition of, have not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have not been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

(ff) Section 810.145, relating to digital ~~video~~ voyeurism, if the offense is a felony.

Section 5. Paragraph (s) of subsection (5) of section 456.074, Florida Statutes, is amended to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(5) The department shall issue an emergency order suspending the license of any health care practitioner who is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses in this state or similar offenses in another jurisdiction:

(s) Section 810.145(8), relating to digital ~~video~~ voyeurism of a minor.

Section 6. Subsection (17) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(17) In addition to the time periods prescribed in this section, a prosecution for digital ~~video~~ voyeurism in violation of s. 810.145 may be commenced within 1 year after the date on which the victim of digital ~~video~~ voyeurism obtains actual knowledge of the existence of such a recording or the date on

which the recording is confiscated by a law enforcement agency, whichever occurs first. Any dissemination of such a recording before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection.

Section 7. Paragraph (r) of subsection (2) of section 943.0584, Florida Statutes, is amended to read:

943.0584 Criminal history records ineligible for court-ordered expunction or court-ordered sealing.—

(2) A criminal history record is ineligible for a certificate of eligibility for expunction or a court-ordered expunction pursuant to s. 943.0585 or a certificate of eligibility for sealing or a court-ordered sealing pursuant to s. 943.059 if the record is a conviction for any of the following offenses:

(r) Voyeurism or digital ~~video~~ voyeurism, as defined in ss. 810.14 and 810.145, respectively;

Section 8. Paragraph (y) of subsection (1) of section 1012.315, Florida Statutes, is amended to read:

1012.315 Screening standards.—A person is ineligible for educator certification or employment in any position that requires direct contact with students in a district school system, a charter school, or a private school that participates in a state scholarship program under chapter 1002 if the person is on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b), is registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C), would be ineligible for an exemption under s. 435.07(4)(c), or has been convicted or found guilty of, has had adjudication withheld for, or has pled

guilty or nolo contendere to:

(1) Any felony offense prohibited under any of the following statutes:

(y) Section 810.145, relating to digital ~~video~~ voyeurism.

Section 9. This act shall take effect October 1, 2024.

The Florida Senate

APPEARANCE RECORD

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

2-15-24
Meeting Date

Fiscal Policy
Committee

1604
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Mazzola

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Orlando FL 32809
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:
Florida PTA

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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 1622
INTRODUCER:	Banking and Insurance Committee and Senator Trumbull
SUBJECT:	Insurance
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Favorable**
3.	Thomas	Yeatman	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1622 revises provisions relating to the Office of Insurance Regulation (OIR). Specifically, the bill:

- Requires each insurer and insurer group to file the required supplemental reports monthly, rather than quarterly, and to provide such information broken down by zip code;
- Provides the Financial Services Commission authority to adopt rules to administer certain provisions;
- Revises financial requirements for a public housing self-insurance fund;
- Provides that, upon a declaration of an emergency, and the filing of an order by the Commissioner of Insurance Regulation, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a residential property that has been damaged as a result of a hurricane or wind loss until 90 days after the residential property has been repaired;
- Repeals current law allowing an insurer, with respect to residential property insurance rate filings, to use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable;
- Repeals provisions providing that certain coverage under the Citizens Property Insurance Corporation is not subject to its rate limitations;
- Amends s. 629.01, F.S., to provide an attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer; and
- Provides a substantial rewrite of provisions regulating reciprocal insurers.

The bill has an indeterminate impact to state revenues or expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.[1] As part of its regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[2]

Financial Examinations

The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[3] As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[4] The OIR is charged with conducting an exam once every three years for high-risk insurers and once every five years for low-risk insurers.[5] However, a domestic insurer that has held a certificate of authority for less than three years must be examined on an annual basis.[6] The OIR is required to examine an insurer applying for an initial certificate of authority prior to issuing the certificate of authority.[7]

Market Conduct Exams

The OIR is authorized, as often as it deems necessary, to perform a market conduct examination of, among other entities, any authorized insurer, to determine compliance with applicable provisions of the workers' compensation law and the Insurance Code.[8] The costs of the examination are to be paid by the subject entity.[9] Section 624.3161, F.S., authorizes the OIR to subject any authorized insurer to a market conduct examination after a hurricane if the insurer, at any time more than 90 days after the end of the hurricane, is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane-related property insurance claims filed to the number of property insurance policies in force.[10]

---

[1] Section 20.121(3)(a), F.S. The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the OIR for purposes of rulemaking. Further, the Commission appoints the commissioner of the OIR.
[2] Section 624.418, F.S.
[3] Section 624.316(1)(a), F.S.
[4] Section 624.318(2), F.S.
[5] Section 624.316(2)(a), F.S.
[6] Section 624.316(2)(f), F.S.
[7] Section 624.316(2)(b), F.S.
[8] Section 624.3161(1), F.S.
[9] Section 624.3161(4), F.S.
[10] Section 624.3161(7)(a), F.S.

The OIR must subject any authorized insurer to a market conduct examination after a hurricane if the insurer, at any time more than 90 days after the end of the hurricane:

- Is among the top 20 percent of insurers based upon a calculation of the ratio of consumer complaints made to the DFS to hurricane-related claims;
- Is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane claims closed without payment to the insurer's total number of hurricane claims on policies providing wind or windstorm coverage;
- Has made significant payments to its managing general agent since the hurricane; or
- Is identified by the OIR as necessitating a market conduct exam for any other reason.[11]

The relevant criteria under ss. 624.3161 and 624.316, F.S., are to be applied to the market conduct examination after a hurricane.[12] Such market conduct examination, if any, must be started within 18 months after the landfall of the related hurricane.[13] The insurer's managing general agent must be included in the market conduct examination as if it were the insurer.[14]

If a market conduct examination reveals that the "insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders," the OIR may order the insurer to file its claims-handling practices and procedures with the OIR for review and inspection.[15] The practices and procedures are to be held by the OIR for 36 months and are considered public records, not trade secrets, during the 36-month period.[16] The term "claims-handling practices and procedures" is defined as "any policies, guidelines, rules, protocols, standard operating procedures, instructions, or directives that govern or guide how and the manner in which an insured's claims for benefits under any policy will be processed."[17]

Annual Statement and Other Information

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with the OIR containing various financial data, including audited financial statements, actuarial opinions, and certain claims data.[18] Each year, insurers must file an annual statement covering the preceding calendar year on or before March 1.[19] Quarterly statements covering each period ending on March 31, June 30, and September 30 must be filed within 45 days after each such date.[20]

In 2021, the Legislature enacted legislation[21] to assist the OIR and the Legislature in identifying current and emerging property insurance litigation trends that are cost drivers adversely affecting insurance rates. As of January 1, 2022, each authorized insurer or insurer group issuing personal

[11] Section 624.3161(7)(b), F.S.
[12] Section 624.3161(7), F.S.
[13] *Id.*
[14] *Id.*
[15] Section 624.3161(6), F.S.
[16] *Id.*
[17] *Id.*
[18] Section 624.424, F.S.
[19] Section 624.424(1)(a), F.S.
[20] *Id.*
[21] Chapter 2021-77, L.O.F.

lines or commercial lines residential property insurance policies in this state must provide specific pieces of data regarding closed claims to the OIR on an annual basis.[22] The report must include, excluding liability only claims, the following information on a per claim basis:

- Claim identification number;
- Type of policy;
- Date, location, and type of loss;
- Name and type of vendors utilized for mitigation, repair, or replacement;
- Dates of when the claim was made; initially closed; most recently reopened, if applicable; when a supplemental claim was made, if applicable; and most recently closed, if different from the initial date the claim was closed;
- Name of the public adjuster, if any;
- Name and Florida Bar number of the claimant's attorney, if any;
- Total amounts that the insurer paid for indemnity, loss adjustment expenses,[23] and insured's attorney fees, including any contingency risk multiplier[24] requested by the attorney; and
- Any other information deemed necessary by the Financial Services Commission to provide the OIR with the ability to track litigation and claims trends occurring in the property market.[25]

Section 624.424(10), F.S., requires insurers and insurer groups doing business in Florida to file quarterly reports with the OIR. These reports, also known as QUASR reports, must include the following information for each county in Florida, compiled on a quarterly basis:

- The total number of policies in force at the end of each month;
- The total number of policies canceled;
- The total number of policies nonrenewed;
- The number of policies canceled due to hurricane risk;
- The number of policies nonrenewed due to hurricane risk;
- The number of new policies written;
- The total dollar value of structure exposure under policies that include wind coverage;
- The number of policies that exclude wind coverage;
- Number of claims open each month;
- Number of claims closed each month;
- Number of claims pending each month; and
- Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

The OIR must aggregate on a statewide basis the data submitted and make such data publicly available on the OIR website within one month after each quarterly and annual filing.[26] The information must be published on the OIR website within one month after each quarterly and

[22] Section 624.424(11), F.S.
[23] Loss adjustment expenses are the costs associated with investigating and adjusting losses or insurance claims. IRMI, https://www.irmi.com/term/insurance-definitions/loss-adjustment-expense (last visited January 31, 2024).
[24] A contingency risk multiplier is a multiplier applied to attorney fees that reflects the risk of attorneys accepting, on a contingency fee basis, cases that may be difficult to win. *See e.g., Joyce v. Federated Nat'l Ins. Co.*, 228 So.3d 1122 (Fla. 2017).
[25] Section 624.424(11, F.S.
[26] Section 624.424(10)(b), F.S.

annual filing.[27] This information is not a trade secret as defined in s. 688.002(4), F.S., or s. 812.081, F.S., and is not subject to the public records exemption for trade secrets provided in s. 119.0715, F.S.[28] The OIR uses this data to track market trends and shares it with the Florida Division of Emergency Management after natural disasters to help determine where emergency response is most necessary.[29]

Nonrenewal of Residential Property Insurance Policies

An insurer that plans to nonrenew more than 10,000 residential property insurance policies within a 12-month period must give written notice to the OIR for informational purposes 90 days before the issuance of such notices of nonrenewal.[30] The notice provided to the OIR must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders.[31]

Public Housing Authorities Self-Insurance Funds

Two or more public housing authorities may form a self-insurance fund as to any one or more risks. Such self-insurance fund that is created must:

- Have annual normal premiums in excess of five million dollars;
- Use a qualified actuary to determine rates and annually submit to the OIR a certification by the actuary that the rates are actuarially sound and are not inadequate;
- Use a qualified actuary to establish reserves for loss and loss adjustment expenses and annually submit to the OIR a certification by the actuary that the loss and loss adjustment expense reserves are adequate;
- Maintain a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary. At a minimum, the program must:
  - Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers;
  - Retain a per-loss occurrence that does not exceed $350,000;
- Submit to the OIR annually an audited fiscal year-end financial statement by an independent certified public accountant;
- Have a governing body which is comprised entirely of commissioners of public housing authorities that are members of the fund or persons appointed by the commissioners;
- Use knowledgeable persons to administer the fund in the areas of claims administration, claims adjusting, underwriting, risk management, loss control, policy administration, financial audit, and legal areas;
- Submit to the OIR copies of contracts used for its members that clearly establish the liability of each member for the obligations of the fund; and
- Annually submit to the OIR a certification by the governing body of the fund that, to the best of its knowledge, the requirements of this section are met.

[27] *Id.*
[28] *Id.*
[29] Office of Insurance Regulation, *Amended Agency Analysis of SB 1622* (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).
[30] Section 624.4305, F.S.
[31] *Id.*

A business entity in which a public housing authority holds an ownership interest or participates in its governance may join a self-insurance fund solely to insure risks related to public housing.

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[32] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.[33] Rather, surplus lines insurers are "unauthorized" insurers,[34] but may transact surplus lines insurance if they are made "eligible" by the OIR. Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.[35]

Notice of Cancellation, Nonrenewal, or Renewal of Insurance Policies

The requirements for an authorized insurer to provide notice of cancellation, nonrenewal, or renewal premium are set forth in s. 627.4133, F.S. The specific notice depends on the type of insurance provided and the particular circumstances of the subject policy.

For an authorized insurer writing personal lines residential or commercial lines residential property insurance policies are generally subject to the following requirements:

- The insurer must give written notice of cancellation, nonrenewal, or termination at least 120 days prior to the effective date of the cancellation, nonrenewal, or termination and the notice is required to include the reason for nonrenewal, cancellation, or termination;[36] and
- The insurer must give written notice of renewal premium at least 45 days prior to the renewal premium[37] and the notice of renewal premium must specify certain information, including the dollar amount of any premium increase that is due to an approved rate increase and the total dollar amount that is due to coverage changes.[38]

[32] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S.
[33] Section 624.09(1), F.S.
[34] Section 624.09(2), F.S.
[35] Section 626.913(4), F.S.
[36] Section 627.4133(2)(b), F.S.
[37] Section 627.4133(2)(a), F.S.
[38] Section 627.4133(7), F.S.

An authorized insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state:

- For a period of 90 days after the property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency and the filing of an order by the Commissioner of Insurance Regulation;[39] and
- Until the earlier of when property has been repaired or one year after the insurer issues the final claim payment, if such property was damaged by any covered peril, but was not damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency and the filing of an order by the Commissioner of Insurance Regulation.[40]

The requirements for a surplus lines insurer to provide notice of cancellation, nonrenewal, or renewal premium are set forth in s. 626.9201, F.S. A surplus lines insurer issuing a policy providing coverage for property insurance must give the insured at least 45 days' advance written notice of nonrenewal that includes the reasons why the policy is not to be renewed.[41]

A surplus lines insurer issuing a policy providing coverage for property insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

- If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation;[42] and
- If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given.[43]

Rate Standards

Part I of ch. 627, F.S., the Rating Law,[44] governs property, casualty, and surety insurance covering the subjects of insurance resident, located, or to be performed in this state.[45] The rating law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.[46] Though the terms "rate" and "premium" are often used interchangeably, the rating law specifies that "rate" is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.[47]

[39] Section 627.4133(2)(e)1.a., F.S.
[40] Section 627.4133(2)(e)1.b., F.S.
[41] Section 626.9201(1), F.S.
[42] Section 626.9201(2)(a), F.S.
[43] Section 626.9201(2)(b), F.S.
[44] Section 627.011, F.S.
[45] Section 627.021(1), F.S.
[46] Section 627.062(1), F.S.
[47] Section 627.041, F.S.

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a "file and use" rate filing, or within 30 days after the effective date of a new rate, which is considered a "use and file" rate filing.[48] Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;
- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- The cost of medical services, if applicable;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.[49]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[50] Citizens is not a private insurance company.[51] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).[52]

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[53] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[54] The Governor appoints an additional member who serves solely to advocate on behalf of the consumer.[55]

[48] Section 627.062, F.S.
[49] Section 627.062(2)(b), F.S.
[50] The term "admitted market" means insurance companies licensed to transact insurance in Florida.
[51] Section 627.351(6)(a)1., F.S.
[52] Section 2, ch. 2002-240, L.O.F.
[53] Section 627.351(6)(a)2., F.S.
[54] Section 627.351(6)(c)4.a., F.S.
[55] Section 627.351(6)(c)4., F.S.

Citizens "Glidepath" Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006.[56] In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[57] In 2021, the Legislature revised this glidepath to increase it one percent per year to up to 15 percent, as follows:

- 11 percent for 2022;
- 12 percent for 2023;
- 13 percent for 2024;
- 14 percent for 2025; and
- 15 percent for 2026 and all subsequent years. [58]

The implementation of these increases cease when Citizens has achieved actuarially sound rates.[59] In addition to the overall glidepath rate increase, Citizens may increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF) coverage, pursuant to s. 215.555(5)(b), F.S.[60] The glidepath does not apply to policies written on or after November 1, 2023, that:

- Do not cover a primary residence;
- Are new policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the OIR to be unsound or an insurer placed in receivership under chapter 631; or
- Are subsequent renewals of those policies.[61]

Instead, the rate standard for such policies prohibits a rate lower than the previous year's rate charged by Citizens and allows a rate increase of greater than 50 percent.

Insurance Holding Companies; Registration; Regulation

An authorized insurer that is a member of an insurance holding company must register and file a registration statement with the OIR each year.[62] The Financial Services Commission has authority to adopt rules establishing the information and manner in which such registered insurers and their affiliates are regulated.[63] The rules do not apply to foreign insurers domiciled in states that are currently accredited by the National Association of Insurance Commissioners (NAIC).[64] The rules must include all requirements and standards of ss. 4 and 5 of the Insurance

[56] Section 15, ch. 2006-12, L.O.F.
[57] Section 10, ch. 2009-87, L.O.F.
[58] Section 627.351(6)(n)5., F.S.
[59] Section 627.351(6)(n)7., F.S.
[60] Section 627.351(6)(n)6., F.S.
[61] Section 627.351(6)(n)8., F.S.
[62] Section 628.801(1), F.S.
[63] *Id.*
[64] *Id.*

Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2010.

NAIC Model Acts

The NAIC is a voluntary association of insurance regulators from all 50 states.[65] The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states.[66]

Model Holding Company Act and Regulation

The NAIC has adopted the Insurance Holding Company System Regulatory Model Act[67] and the Insurance Holding Company Model Regulation with Reporting Forms and Instructions.[68] The provisions of the model acts provide insurance regulators access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. The regulator may require any insurer registered as a controlled insurer to produce information not in the possession of the insurer if the insurer can obtain access to such. If the insurer fails to obtain the requested information, the insurer is required to provide an explanation of such failure. If the regulator determines that the explanation is without merit, the regulator may require the insurer to pay a penalty for each day's delay, or may suspend or revoke the insurer's certificate of authority.[69]

Reciprocal Insurers

A reciprocal insurance exchange is a form of insurance organization in which individuals and businesses exchange insurance contracts and spread the risks associated with those contracts among themselves.[70] Policyholders of a reciprocal insurance exchange are referred to as subscribers.[71] In Florida, reciprocal insurers are regulated pursuant to ch. 629, F.S. Florida law provides that a "reciprocal insurer" is "an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves"[72] and:

> "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity,

[65] National Association of Insurance Commissioners (NAIC), *Frequently Asked Questions*, https://content.naic.org/sites/default/files/about-faq.pdf (last visited Jan. 31, 2024).
[66] *Id.*
[67] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Regulatory Act*, https://content.naic.org/sites/default/files/MO440_0.pdf (last visited Jan. 31, 2024).
[68] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions*, https://content.naic.org/sites/default/files/MO450_0.pdf (last visited Jan. 31, 2024).
[69] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Regulatory Act*, Section 6B, https://content.naic.org/sites/default/files/MO440_0.pdf (last visited Jan. 31, 2024).
[70] *What Is a Reciprocal Insurance Exchange?* Investopedia https://www.investopedia.com/terms/r/reciprocal-insurance-exchange.asp (last visited Jan. 31, 2024).
[71] *Id.*
[72] Section 629.021, F.S.

> the interexchange being effectuated through an "attorney in fact" common to all such persons.[73]

A reciprocal insurer may transact any kind of insurance other than life insurance or title insurance.[74] A domestic reciprocal insurer must maintain surplus funds of not less than $250,000 and must, when first authorized, have an expendable surplus of not less than $750,000.[75] A domestic reciprocal insurer may organize with twenty-five or more persons domiciled in Florida making application to the OIR for a certificate of authority to transact insurance and file a declaration setting forth:

- The name of the insurer;
- The location of the insurer's principal office, which must be the same as that of the attorney and must be maintained within this state;
- The kinds of insurance proposed to be transacted;
- The names and addresses of the original subscribers;
- The designation and appointment of the proposed attorney and a copy of the power of attorney;
- The names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if other than a corporation;
- The powers of the subscribers' advisory committee, and the names and terms of office of its members;
- That all moneys paid to the reciprocal must, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- A copy of the subscribers' agreement;
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at an adequate approved rate;
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the required surplus is on hand; and
- A copy of each policy, endorsement, and application form it proposes to use.

When the declaration is filed, the attorney must file a $100,000 bond in favor of the state for the benefit of all persons damaged as a result of a breach by the attorney of the conditions of his or her bond.[76]

Each domestic reciprocal insurer must have a subscribers' advisory committee. The advisory committee exercising the subscribers' rights must be selected under such rules as the subscribers adopt.[77] Not less than two-thirds of such committee must be subscribers other than the attorney,

[73] Section 629.011, F.S.
[74] Section 629.041, F.S.
[75] Section 629.071, F.S.
[76] Section 629.121, F.S.
[77] Section 629.201(1), F.S.

or any person employed by, representing, or having a financial interest in the attorney.[78] The committee must:

- Supervise the finances of the insurer;
- Supervise the insurer's operations to assure conformity with the subscribers' agreement and power of attorney;
- Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and
- Have such additional powers and functions as may be conferred by the subscribers' agreement.[79]

Power of Attorney

The rights and powers of the attorney of a reciprocal insurer are as provided in the power of attorney given to it by the subscribers.[80] Currently, the power of attorney must set forth:

- The powers of the attorney;
- That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
- The general services to be performed by the attorney;
- The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
- Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than five times nor more than ten times the premium or premium deposit stated in the policy.[81]

Under current law, the power of attorney may:

- Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
- Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
- Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
- Contain other lawful provisions deemed advisable.

The terms of any power of attorney or agreement collateral must be reasonable and equitable, and no such power or agreement may be used or be effective in Florida unless filed with the OIR.[82]

Fiduciary Duty

Under s. 673.3071, F.S., fiduciary means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument. Under Florida's

[78] Section 629.201(2), F.S.
[79] Section 629.201(3), F.S.
[80] Section 629.101(1), F.S.
[81] Section 629.101(2), F.S.
[82] Section 629.101(3), F.S.

Trust Code, a fiduciary means "a person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary, who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries.[83] Furthermore, the holder of a power to direct is liable for any loss that results from breach of fiduciary duty.[84]

Fiduciary duty is defined as "someone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes the duties of good faith, loyalty, due care, confidentiality, prudence and disclosure".[85]

Fiduciary duty is often found in the following relationships: attorney-client; executor-heir; guardian-ward; agent-principal; trustee-beneficiary; corporate officer-shareholder. Depending upon particular facts, lenders, clerics and spouses may share a fiduciary duty.[86] A fiduciary duty may arise expressly or be implied by law.[87]

The Florida Supreme Court (Court), in *Quinn v. Phipps* (1927), held that a fiduciary duty "exists, and that relief is granted, *in all cases* in which influence has been acquired and abused – in which confidence has been reposed and betrayed."[88] In addition, the Court, characterized the fiduciary relationship as follows:

> [T]he relation and duties involved need not be legal; they may be moral, social, domestic, or personal. *If a relation of trust and confidence exists between the parties (that is to say, where confidence is reposed by one party and a trust accepted by the other, or where confidence has been acquired and abused), that is sufficient as a predicate for relief.* The origin of the confidence is immaterial. [italics in original, quoting *Quinn*][89]

The Court further stated: "…as the relationship and duties do not have to be legal, "[A] "fiduciary relationship may be implied by law, and such relationships are 'premised upon the *specific factual situation* surrounding the transaction and the relationship of the parties."[90]

According to the Florida Bar, "[w]hen a fiduciary relationship exists, the fiduciary is under a duty to act for the benefit of the beneficiary only as to matters within the scope of the fiduciary relationship. No duty attaches to matters beyond the scope of the fiduciary relationship."[91]

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[83] Section 736.0808(4), F.S.
[84] *Id*.
[85] Cornell Law School, Legal Information Institute, *Fiduciary Duty, Overview*, https://www.law.cornell.edu/wex/fiduciary_duty (last visited Feb. 1, 2024). See also, Black's Law Dictionary, 2nd Ed., *available at* https://thelawdictionary.org/fiduciary-duty/ (last visited Feb. 1, 2024).
[86] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024).
[87] *Id* at *How Fiduciary Duty Arises.*
[88] *Orlinsky v. Patraka*, 971 So. 2d 796 (Fla. Dist. Ct. App. 2008)
[89] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024). *See* fn 15: *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 20002) (emphasis added). *In Quinn v. Phipps*, 113 So. 419, 421, 425-426 (Fla. 1927), the Florida Supreme Court addressed the fiduciary relationship in the context of the development of equity.
[90] *Orlinsky v. Patraka*, 971 So. 2d 796 (Fla. Dist. Ct. App. 2008)
[91] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024).

Furthermore, "[w]hile the parameters of the fiduciary relationship may be undefinable, the relationship may arise expressly, through contracts and statutes, or may be implied under the specific circumstances of the parties' relationship, which often requires a factually intensive inquiry."[92]

Power of Attorney and Attorney in Fact

Chapter 709, F.S., relates to the powers of attorney and similar instruments. A durable power of attorney is a written power of attorney by which a principal designates another as the principal's attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance of real property by Florida law, and must contain the words: "This durable power of attorney is not affected by subsequent incapacity of the principal except as otherwise provided in s. 708.08, F.S."; or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity. A durable power of attorney is exercisable as of the date of execution. However, if the durable power of attorney is conditioned upon the principal's lack of capacity to manage property as defined in s. 744.102(12)(a), F.S., the durable power of attorney is exercisable upon the delivery of affidavits to the third party.[93]

An attorney in fact is a person who is authorized to represent someone else in business, financial, and private matters, usually through a power of attorney.[94] An attorney in fact is not necessarily an attorney, but they must act in the best interests of the principal and follow any instructions or guidelines set forth in the power of attorney.[95] An attorney in fact is not the same as a lawyer or attorney. A lawyer or attorney is professional who is duly licensed to practice law and offers advice to their client and represents them in a courtroom. While an attorney in fact has been given the authority to act on, often making decisions for, the behalf of another person.[96]

An attorney in fact must be a natural person who is 18 years of age or older, is of sound mind, or a financial institution, as defined in ch. 655, F.S., with trust powers having a place of business in this state and authorized to conduct trust business in this state. A not-for-profit corporation, organized for charitable or religious purposes in this state, which has qualified as a court-appointed guardian prior to January 1, 1996, and which is a tax-exempt organization under 26 U.S.C. s. 501(c)(3), may also act as an attorney in fact. Notwithstanding any contrary clause in the written power of attorney, no assets of the principal may be used for the benefit of the corporate attorney in fact, or its officers or directors.[97]

An attorney in fact is a fiduciary who must observe the standards of care applicable to trustees as described in s. 736.0901, F.S., except as otherwise provided in s. 709.08, F.S.[98]

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[92] *Id.*
[93] Section 709.08(1) and (4)(c) and (d), F.S.
[94] Adam Hayes, Investopedia, *Attorney-in-Fact: Definition, Types, Powers and Duties* (August 2, 2023), https://www.investopedia.com/terms/a/attorneyinfact.asp (last visited Feb. 1, 2024).
[95] *Id.*
[96] *Id.*
[97] Section 709.08, F.S.
[98] Section 709.08(8), F.S.

III. Effect of Proposed Changes:

Market Conduct Examinations

Section 1 amends s. 624.3161, F.S., to authorize the Office of Insurance Regulation (OIR) to conduct market conduct examinations of the attorney in fact of each reciprocal insurer.

Annual Statement and Other Information

Section 2 amends s. 624.424, F.S., to require each insurer and insurer group to file the required supplemental reports on personal lines and commercial lines property insurance monthly, rather than quarterly. Requires such information to be broken down by zip code, rather than by county.

Nonrenewal of Residential Property Insurance Policies

Section 3 amends s. 624.4305. F.S., to provide the Financial Services Commission (Commission) the authority to adopt rules to administer this section. The section requires any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period to give the OIR at least 90 days written notice before issuing notices of nonrenewal.

Public Housing Authorities Self-Insurance Funds

Section 4 amends s. 624.46226, F.S., to revise financial requirements for a public housing self-insurance fund (fund) to:

- Specify that reinsurance may be used as part of its program to protect the financial stability of the fund;
- Require a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by a qualified actuary;
- Require the fund's continuing program of excess insurance coverage and reinsurance be certified by a qualified and independent actuary as to the program's adequacy;
- Include reinsurance or excess insurance from authorized insurance carriers or eligible surplus lines insurers; and
- Eliminate the requirement to retain a per-loss occurrence that does not exceed $350,000.

Notice of cancellation or nonrenewal by Surplus Lines Insurers

Section 5 amends s. 626.9201, F.S., to provide that, upon a declaration of an emergency pursuant to s. 252.36, F.S., and the filing of an order by the Commissioner of Insurance Regulation, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for a period of 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in the area.

The bill provides the following exceptions, allowing the surplus lines insurer to cancel the policy:

- Upon 10 days' notice for nonpayment of premium.
- Upon 45 days' notice:
  - For a material misstatement or fraud;
  - If the insurer determines the insured has unreasonably caused a delay in repairs;
  - If the insurer or its agent makes a reasonable written inquiry to the insured as to the status of repairs, and the insured fails within 30 calendar days to provide a response; or
  - If the insurer has paid policy limits.

If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 day notice to the insured that the insurer intends to nonrenew the policy after 90 days after the dwelling or residential property has been repaired.

Other than the specified limitations proscribed within this section, the insurer is not prevented from canceling or nonrenewing the policy 90 days after the repair is completed for the same reasons the insurer would have otherwise canceled or nonrewed.

The bill provides the Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this requirement.

Rate Standards

Section 6 amends s. 627.062, F.S., to repeal current law allowing an insurer, with respect to residential property insurance rate filings, to use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable.

Citizens Property Insurance Corporation

Section 7 amends s. 627.351, F.S., to repeal provisions adopted last legislative session that allow the Citizens Property Insurance Corporation (Citizens) to apply a different methodology to polices which, immediately prior to being insured by Citizens, were insured by an insurer determined by the OIR to be unsound or that was placed in receivership. Rates for such policies, if they cover a primary residence, will be subject to the Citizens rate "glidepath" which will restrict rate increases to 13 percent for 2024, rather than a prohibition on rate decreases and a limit of 50 percent on rate increases at issuance at renewal. If such policies do not cover a primary residence, the prohibition on rate decreases and the 50 percent limit on rate increases will apply.

Scope of part

Section 8 amends s. 628.011, F.S., to remove the word "stock" from the phrase "domestic stock insurers."

Investigation of Proposed Organizations

Section 9 amends s. 628.061, F.S., to provide the OFR is authorized to conduct an investigation in connection with any proposal to organize or incorporate a domestic insurer. The OFR is required to investigate:

- The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact;
- The character, financial responsibility, insurance experience, and business qualifications of its proposed officers, members of its subscribers' advisory committee, or officers of its attorney in fact; and
- The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Insurance Holding Companies; Registration; Regulation

Section 10 amends s. 628.801, F.S., to provide the Commission may adopt rules for the filing of the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners (NAIC), as adopted in December 2020.

Reciprocal Insurers

Definitions

Section 11 amends s. 629.011, F.S., to add definitions for the terms "affiliated person," "attorney in fact," "controlling company," and "reciprocal insurer."

"Affiliated person" of another person means any of the following:

- The spouse of the other person;
- The parents of the other person, and their lineal descendants, and the parents of the other person's spouse, and their lineal descendants;
- A person who directly or indirectly owns or controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the other person;
- A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with power to vote, by the other person;
- A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person;
- A director, an officer, a trustee, a partner, an owner, a manager, a joint venture, an employee, or other person performing duties similar to those of persons in such positions;
- If the other person is an investment company or any member of an advisory board of such company;
- If the other person is an unincorporated investment company not having a board of directors, the depositor of such company;
- A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring, or limiting the disposition of:
    - Securities of an attorney in fact or controlling company that is a stock corporation; or

- An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

"Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

"Controlling company" means a person, a corporation, a trust, a limited liability company, an association, or another entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

"Reciprocal insurer" is defined as an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

The bill retains the current definition of "reciprocal insurance."

"Reciprocal Insurer" Defined

Section 12 repeals s. 629.021, F.S., defining "reciprocal insurer."

Attorney

Section 13 repeals s. 629.061, F.S., providing requirements related to the attorney in fact.

Organization of Reciprocal Insurer

Section 14 amends s. 629.081, F.S., to provide for the permit application by those domiciled in this state who wish to organize as a domestic reciprocal insurer. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the OIR.

Reciprocal insurer applicants must apply to the OIR to receive a permit. The permit application must be in writing and in accordance with forms prescribed by the OIR. The reciprocal insurance permit application must include the following:

- The name of the proposed reciprocal insurer, in accordance with s. 629.051, F.S.;
- The location of the insurer's principal office, which shall be the same as that of the proposed attorney in fact and which shall be maintained in Florida;
- The kinds of insurance proposed to be transacted;
- The names and addresses of the original 25 or more subscribers;
- The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of attorney;
- The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or if other than a corporation, as well as the background information as specified in s. 629.227, F.S., for all officers, directors and in equivalent positions of the proposed attorney in fact, as well as, for any person with an ownership interest of 10 percent or more in the proposed attorney in fact;

- The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified;
- The proposed charter powers of the subscribers' advisory committee, and the names and terms of office of the members thereof as well as the background information as specified in s. 629.227, F.S., for each proposed member;
- A copy of the proposed subscribers' agreement; and
- A copy of each policy, endorsement, and application form the insurer proposes to issue or use;

The filing must be accompanied by the application fee required under s. 624.501(11)(a), F.S., and such other pertinent information and documents reasonably requested by the OIR.

The OIR is authorized to evaluate and grant or deny the permit application in accordance with ss. 628.061 and 628.071, F.S. and other relevant provisions of the code.

Reciprocal Certificate of Authority

Section 15 amends s. 629.091, F.S., to provide the application requirements for a certificate of authority as a domestic reciprocal insurer. A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit. Such application must include:

- Executed copies of any proposed or draft documents required as part of the permit application;
- A statement affirming that all moneys paid to the reciprocal insurer must, after deducting any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at the rate that was filed with and approved by the OIR;
- A copy of the required bond;
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the required surplus is on hand; and
- Such other pertinent information or documents as reasonably requested by the OIR.

If the reciprocal insurer intends to issue nonassessable policies under the certificate of authority, and the OIR determines the reciprocal insurer meets the legal requirements to issue such polices, including surplus requirements, the OIR shall grant a certificate of authority to the reciprocal authority. However, if the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue or renew nonassessable policies or convert assessable policies to nonassessable policies and the provisions of s. 629.301, F.S., apply.

The certificate of authority is issued in the name of the reciprocal insurer to its attorney in fact.

Continued Eligibility for Certificate of Authority

Section 16 creates s. 629.094, F.S., to provide that in order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer must continue to meet all conditions

required under the chapter and the rules for the initial applications for a permit and certificate of authority.

Power of Attorney

Section 17 amends s. 629.101, F.S., to provide that the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

Acquisitions

Section 18 creates s. 629.225, F.S., to provide the provisions of this section apply to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers.

The bill provides requirements regarding the acquisition of 10 percent or more of a reciprocal insurer. To complete such an acquisition, the person seeking to obtain such ownership interest must provide notice of the attorney in fact of the reciprocal insurer within certain time frames, file an application with the OIR containing detailed information about the offer and the person making the offer which will be reviewed pursuant to ch. 120, F.S., and receive OIR approval of the acquisition. The OIR must approve the acquisition if the applicant proves that the acquisition will not jeopardize the financial stability of the attorney in fact or harm the reciprocal insurer's subscribers or public. The bill provides that:

- A person may not acquire, 10 percent or more of the outstanding voting securities of an attorney in fact unless:
  - The person has filed with the OIR and sent to the principal office of the attorney in fact, and any controlling company of the attorney in fact, the subscribers' advisory committee and the domestic reciprocal insurer a letter of notification regarding the transaction no later than five days after any offer is proposed, or no later than five days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. Such notification must be on forms prescribed by the OIR and must contain information necessary to understand the transaction and identify all purchasers and owners involved;
  - The subscribers' advisory committee has provided the required notification, on a form prescribed by the OIR, letting the subscribers know of the filing deadlines for objecting to the acquisition;
  - The person has filed with the OIR an application which contains the required information within 30 days after any offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved; and
  - The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved;
- This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the OIR;
- The OIR may waive or person filing the notice may request that the OIR waive the requirement that the subscribers' advisory committee provide notice to subscribers of the proposed acquisition, if there is no change in ultimate controlling shareholders and their ownership percentages and no unaffiliated parties acquire any interest in the attorney in fact;
- The application must contain the following information:

  - The identity and background information specified each person on whose behalf the acquisition is to be made and any person who controls such other person;
  - The source and amount of the funds to be used in making the acquisition;
  - Any plans made to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management;
  - The nature and the extent of the controlling interest which the person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation;
  - The number of shares or other securities which the person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired;
  - Information as to any arrangement with any party with respect to any of the securities of the attorney in fact or controlling company; and
  - The required fee;
- An amendment to the application must be filed with the OIR detailing any changes in facts or the background information detailed in the application;
- The acquisition application must be reviewed pursuant to ch. 120, F.S., the Administrative Procedure Act. The OIR may initiate or by written request conduct a proceeding to consider the appropriateness of the proposed filing. Under this review:
  - Time periods are tolled during the pendency of the proceeding;
  - Written request must be filed within 10 days after the date notice of filing is given, or 10 days after notice of the filing is sent to the subscribers by the subscribers' advisory committee, whichever is later;
  - During the review period by the OIR, any person or affiliated person complying with the filing requirements may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon approval by the OIR;
  - If at any time, the OIR finds an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the OIR shall immediately order the proposed acquisition disapproved and any further steps to conclude the acquisition ceased;
  - A material change in the operation or management of the attorney in fact or controlling company, unless specifically approved by the OIR, are prohibited;
  - A request for material change may be provided to the OIR by advanced written notice;
  - The OIR may either approve or disapprove a written request for material change, if the request meets or does not meet defined provisions provided in subsection (7);
  - The proceeding must conducted within 60 days after the date of the written request is received by the OIR;
  - The OIR will issue a recommended order within 20 days after the date of the close of the proceedings; and
  - A final order will be issued within 20 days after the date of the recommended order, or if exceptions are filed, within 20 days after the date of the exceptions are filed;
- The OIR may disapprove any acquisition by any person or affiliated person who willfully violates this section or violates the OIR orders related to divestiture or the acquisition of specified additional stock or ownership interest without complying with this section;
- The applicant has the burden of proof;

- The bill provides criteria for the OIR approval of an acquisition, which generally must be given if the OIR finds that the acquisition will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or harm the public;
- Any acquisition contrary to this section is void, as is any vote by a stockholder of record or any other person of any security so acquired;
- OIR approval of an offer or acquisition does not constitute a recommendation by the OIR;
- A presumption of control may be rebutted by filing a valid disclaimer of control with the OIR;
- Authorizes the OIR to order divesture by a person who acquires 10 percent or more of voting securities of an attorney in fact or a controlling company without complying with this section; and
- Authorizes the OIR to suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

A person who violates these provisions commits a third degree felony, punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.[99] The statute of limitations for prosecution of an offense committed under this section is five years.

The term "material change in the operation of the attorney in fact" is defined to mean a transaction that disposes of or obligates five percent or more of the domestic reciprocal insurer.

The term "material change in the management of the attorney in fact" is defined to mean any change in management involving officers or directors of the attorney in fact or any person of the attorney or controlling company having authority to dispose of or obligate five percent or more of the attorney in fact's capital or surplus.

Background Information

Section 19 creates s. 629.227, F.S., to provide the required background information that must be submitted on officers, directors, managers, and those in equivalent positions of the proposed attorney in fact, as well as, for any person with an ownership interest of 10 percent or more. The background information must include a sworn biographical statement providing detailed information of the person's business history over the last 20 years. The information must detail any criminal convictions, license revocation proceedings, bankruptcies, and other specified proceedings that have occurred in the last 10 years. Fingerprints must also be submitted.

Attorney in Fact

Section 20 creates s. 629.2297, F.S., to provide that any person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, any member of a subscribers' advisory committee of a reciprocal insurer doing business in this state, or an officer or director of

[99] A third degree felony is punishable by up to five years imprisonment and up to a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. Under s. 775.084, violent career criminals, habitual felony offenders, habitual violent felony offenders or three-time felony offenders, the court may sentence such third degree felony offenders to five to 10 years, not exceeding 15 years, imprisonment.

any other insurer doing business in this state, and who served in that capacity within the two-year period before the date the insurer or reciprocal insurer became insolvent, for any insolvency that occurs on or after July 1, 2024, may not, unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency:

- Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact, or a member of a subscribers advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state; or
- Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact, or a member of the subscribers committee of a reciprocal insurer doing business in this state, or an officer or director of any insurer doing business in this state, through contract, trust, or by operation of law, unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Nonassessable Policies

Section 21 amends s. 629.261, F.S., to provide that upon impairment of the surplus of a nonassessable reciprocal insurer, the OIR must revoke its authorization. Such revocation does not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has been paid. After revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

Merger or conversion

Section 22 amends s. 629.291, F.S., to provide requirements for mergers and conversions. The bill provides that a domestic stock insurer may not be converted to a reciprocal insurer. The bill provides that any plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed with the OIR on forms adopted by the Financial Services Commission and must contain such information as the OIR reasonably requires to evaluate the transaction.

The bill provides that an assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer if the subscriber's advisory committee approves, the attorney in fact submits the required application, and the OIR approves.

If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301, F.S., apply.

Rulemaking Authority

Section 23 creates s. 629.525, F.S., to grant rulemaking authority to the Financial Services Commission to adopt, amend, or repeal rules necessary to implement the chapter.

Conforming Changes

Sections 8, 9, 24, and 25 amend ss. 628.011 (Scope of Part), 628.061 (Investigation of Proposed Organization), 163.01 (Florida Interlocal Cooperation Act of 1969), and 626.9531 (Identification of Insurers, Agents, and Insurance Contracts), F.S., respectively, to conform those sections based on changes made by the bill.

Effective Date

Section 26 provides that the bill becomes effective on July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Article VII, s. 19 of the Florida Constitution requires that a new state tax or fee must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines "fee" to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service." Section 14 and Section 18 impose an application or filing fee subject to s. 624.501(1)(a), F.S. The bill requires a two-thirds vote of the membership of each house of the Legislature.

B. Private Sector Impact:

The bill is intended to have a positive impact on consumers.

Insurers will need to revise current procedures in order to comply with the provisions of the bill. The cost of such revisions is indeterminate.

Applicants are subject to filing and application fees under s. 624.501(1)(a), F.S.

Applicants may experience out of pocket expenses for any fingerprint or state or federal background check required under the bill. The cost for a state and national criminal history record check is $37.25 per name. In addition, the Florida Department of Law Enforcement (FDLE) reports Livescan Services may assess additional processing fees,[100] which may require an applicant to pay additional fees.[101]

C. Government Sector Impact:

The bill has an indeterminate impact to state revenues and expenditures.

The Office of Insurance Regulation may experience an increase in filings and applications, resulting in a positive, yet indeterminate, impact to state revenues. The bill makes numerous changes that will require systems and process changes in the OIR. However, the OIR has indicated any technology updates can be absorbed within existing resources.[102]

The bill may have a positive impact to the Florida Department of Law Enforcement's Operating Trust Fund as the cost for a state and national criminal history record check is $37.25 per name submitted. The Federal Bureau of Investigation (FBI) receives $13.25 and, pursuant to s. 943.053(3)(e), F.S., the FDLE retains $24.[103]

The bill creates a new third degree felony for violation of s. 629.225, F.S., which is punishable by up to five years in prison. The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not met to determine the impact of this bill. The bill has a positive/negative indeterminate impact, meaning the final direction of the impact is unknown, at this time.

VI. Technical Deficiencies:

Section 13 repeals s. 629.062, F.S., relating to attorney in fact, eliminating the provision which requires the attorney in fact to maintain an office at the place designated by the subscribers in the power of attorney. This language or similar language could be added to Section 17.

Section 17 amends s. 629.101, F.S., relating to "power of attorney." Specifically the tag line was amended to "power of attorney in fact"; however, the amended language from attorney to attorney in fact is not consistent throughout the section.

[100] *Id.*
[101] *Id.*
[102] Email from Kevin Jacobs, Deputy Chief of Staff, Office of Insurance Regulation to Michelle Sanders, Legislative Analyst, Senate Appropriations Committee on Agriculture, Environment, and General Government (Feb. 1, 2024).
[103] The Florida Department of Law Enforcement, *Senate Bill Analysis 1622* (Jan. 26, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

The section relates to a power of attorney (legal document) and not an attorney in fact. It would appear legislative intent is to allow an attorney in fact, as defined within this act, rather than a duly licensed attorney, to hold the authority placed within a power of attorney. To provide clarification, the section could be amended to read: 629.101 Power of attorney and "power of attorney in fact" could replace every reference to an "attorney" throughout the section.

VII. Related Issues:

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through the Florida Department of Law Enforcement (FDLE), a sex offender registry check, local criminal records check, and a domestic violence check.[104] Level 2 screenings are more thorough because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through FDLE, a national criminal history records check through the Federal Bureau of Investigation (FBI), and a domestic violence check. It may also include local criminal records checks. A Level 2 screening disqualifies a person from employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.[105]

If it is the intent of the bill to require applicants to undergo finger-print based, state and national criminal history record checks (Level 2), during the application process, the FDLE recommends stating so specifically within each applicable section of the bill. To facilitate state and national criminal history record checks, the following language should be included to ensure compliance with federal law and the United States Department of Justice (DOJ)-established criteria for the submission of fingerprints to the FBI's Criminal Justice Information Services (CJIS) Division for a national criminal history background check.[106]

> An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.
>
> Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).[107]

[104] Section 435.03, F.S.
[105] Section 435.04, F.S.
[106] The Florida Department of Law Enforcement, *Senate Bill Analysis 1622* (Jan. 26, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).
[107] *Id.*

The FDLE notes that a statute cannot be approved for access to FBI criminal history record information (CHRI) unless all criterion specified within Public Law 92-544 are satisfied which includes a review of whether the population(s) (i.e., categories of individuals) being screened is clearly defined and the state agency responsible for conducting the fingerprint-based background check and receiving the CHRI from the FBI is identified within the statute(s). As written, the FDLE opines "the FBI will likely deny the request for fingerprint-based access to national criminal history record check information."[108]

The FDLE recommends further defining and clarifying the terms "Affiliated Person" within s. 6239.011, F.S., and "Controlling Company" within s. 629.011, F.S., as the FBI considers the terms overly broad and undefined.[109]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.3161, 624.424, 624.4305, 624.46226, 626.9201, 627.062, 627.351, 628.011, 628.061, 628.801, 629.011, 629.081, 629.091, 629.101, 629.261, 629.291, 163.01, and 626.9531.

This bill creates the following sections of the Florida Statutes: 629.094, 629.225, 629.227, 629.229, and 629.525.

This bill repeals the following sections of the Florida Statutes: 629.021 and 629.061.

IX. Additional Information:

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

CS by Banking and Insurance Committee on January 29, 2024:
The committee substitute removed the entire substance of the bill made numerous changes to the wording and organization of the bill and:

- Revised the provision in section 5 of the bill regarding cancellation or nonrenewal by a surplus lines insurer after a hurricane, to include damage that is the result of wind loss;
- Repealed current law allowing an insurer, with respect to residential property insurance rate filings, to use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable;
- Created a new section of statute, s. 629.229, F.S., providing for regulation of the attorney in fact, officers, and directors;
- Removed sections 13, 14, 15, 17, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, 39, 40, 41, 44, 45, and 47 from the bill; and
- Changed the effective date from July 1, 2025 to July 1, 2024.

[108] *Id.*
[109] *Id.*

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Trumbull

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A bill to be entitled

An act relating to insurance; amending s. 624.3161, F.S.; revising the entities for which the Office of Insurance Regulation is required to conduct market conduct examinations; amending s. 624.424, F.S.; requiring insurers and insurer groups to file a specified supplemental report on a monthly basis; requiring that such report include certain information for each zip code; amending s. 624.4305, F.S.; authorizing the Financial Services Commission to adopt rules related to notice of nonrenewal of residential property insurance policies; amending s. 624.46226, F.S.; revising the requirements for public housing authority self-insurance funds; amending s. 626.9201, F.S.; prohibiting insurers from canceling or nonrenewing certain insurance policies under certain circumstances; providing exceptions; providing construction; authorizing the commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; amending s. 627.062, F.S.; specifying requirements for rate filings if certain models are used; amending s. 627.351, F.S.; revising requirements for certain policies that are not subject to certain rate increase limitations; amending s. 628.011, F.S.; conforming provisions to changes made by the act; amending s. 628.061, F.S.; conforming a provision to changes made by the act; revising the persons that the office is required to investigate in connection with a proposal to organize or incorporate a domestic

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insurer; amending s. 628.801, F.S.; revising requirements for rules adopted for insurers that are members of an insurance holding company; deleting an obsolete date; authorizing the commission to adopt rules; amending s. 629.011, F.S.; defining terms; repealing s. 629.021, F.S., relating to the definition of the term "reciprocal insurer"; repealing s. 629.061, F.S., relating to the term "attorney"; amending s. 629.081, F.S.; revising the procedure for persons to organize as a domestic reciprocal insurer; specifying requirements for the permit application; requiring that the application be accompanied by a specified fee and other pertinent information and documents; requiring the office to evaluate and grant or deny the permit application in accordance with specified provisions; amending s. 629.091, F.S.; providing that a domestic reciprocal insurer may seek a certificate of authority only under certain circumstances; providing requirements for an application for a certificate of authority to operate as a domestic reciprocal insurer; requiring the office to grant a certificate of authority under certain circumstances; requiring that such certificate of authority be issued in the name of the reciprocal insurer to its attorney in fact; creating s. 629.094, F.S.; requiring a domestic reciprocal insurer to meet certain requirements to maintain its eligibility for a certificate of authority; amending s. 629.101, F.S.; revising requirements for the power of attorney given

by subscribers of a domestic reciprocal insurer to the attorney in fact; creating s. 629.225, F.S.; providing applicability; prohibiting persons from concluding a tender offer or exchange offer or acquiring securities of certain attorneys in fact and controlling companies of certain attorneys in fact; providing an exception; providing applicability; authorizing certain persons to request that the office waive certain requirements; providing that the office may waive certain requirements if specified determinations are made; specifying the requirements of an application to the office relating to certain acquisitions; requiring that such application be accompanied by a specified fee; requiring that amendments be filed with the office under certain circumstances; specifying the manner in which the acquisition application must be reviewed; authorizing the office, and requiring the office if a request for a proceeding is filed, to conduct a proceeding within a specified timeframe to consider the appropriateness of such application; requiring that certain time periods be tolled; requiring that written requests for a proceeding be filed within a certain timeframe; authorizing certain persons to take all steps to conclude the acquisition during the pendency of the proceeding or review period; requiring the office to order a proposed acquisition disapproved and that actions to conclude the acquisition be ceased under certain circumstances; prohibiting certain persons from making certain

changes during the pendency of the office's review of an acquisition; providing an exception; defining the terms "material change in the operation of the attorney in fact" and "material change in the management of the attorney in fact"; requiring the office to approve or disapprove certain changes upon making certain findings; requiring that a proceeding be conducted within a certain timeframe; requiring that recommended orders and final orders be issued within a certain timeframe; specifying the circumstances under which the office may disapprove an acquisition; specifying that certain persons have the burden of proof; requiring the office to approve an acquisition upon certain findings; specifying that certain votes are not valid and that certain acquisitions are void; specifying that certain provisions may be enforced by an injunction; creating a private right of action in favor of the attorney in fact or the controlling company to enforce certain provisions; providing that a certain demand upon the office is not required before certain legal actions; providing that the office is not a necessary party to certain actions; specifying the persons who are deemed designated for service of process and who have submitted to the administrative jurisdiction of the office; providing that approval by the office does not constitute a certain recommendation; providing that certain actions are unlawful; providing criminal penalties; providing a statute of limitations;

authorizing a person to rebut a presumption of control by filing certain disclaimers; specifying the contents of such disclaimer; specifying that, after a disclaimer is filed, the attorney in fact is relieved of a certain duty; authorizing the office to order certain persons to cease acquisition of the attorney in fact or controlling company and divest themselves of any stock or ownership interest under certain circumstances; requiring the office to suspend or revoke the reciprocal certificate of authority under certain circumstances; creating s. 629.227, F.S.; specifying the information as to the background and identity of certain persons which must be furnished by such persons; creating s. 629.229, F.S.; prohibiting certain persons who served in certain capacities before a specified date from serving in certain other roles or having certain control over certain selections; providing an exception; amending s. 629.261, F.S.; requiring the office to revoke certain authorization under certain circumstances; deleting provisions regarding the office's authority to issue a certificate authoring the insurer to extinguish the contingent liability of subscribers; deleting a prohibition regarding the office's authorization to extinguish the contingent liability of certain subscribers; amending s. 629.291, F.S.; providing that certain insurers that merge are governed by the insurance code; prohibiting domestic stock insurers from being converted to reciprocal insurers; requiring

that specified plans be filed with the office and that such plans contain certain information; deleting a provision regarding a stock or mutual insurer's capital and surplus requirements and rights; authorizing the conversion of assessable reciprocal insurers to nonassessable reciprocal insurers under certain circumstances; creating s. 629.525, F.S.; requiring the commission to adopt, amend, or repeal certain rules; amending ss. 163.01 and 626.9531, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (1) of section 624.3161, Florida Statutes, is amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the office shall examine each licensed rating organization, each advisory organization, each group, association, carrier, as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance, the attorney in fact of each reciprocal insurer, and each authorized insurer transacting in this state any class of insurance to which the provisions of chapter 627 are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

Section 2. Paragraph (a) of subsection (10) of section

624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(10)(a) Each insurer or insurer group doing business in this state shall file on a monthly ~~quarterly~~ basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each zip code ~~county on a monthly basis~~:

1. Total number of policies in force at the end of each month.

2. Total number of policies canceled.

3. Total number of policies nonrenewed.

4. Number of policies canceled due to hurricane risk.

5. Number of policies nonrenewed due to hurricane risk.

6. Number of new policies written.

7. Total dollar value of structure exposure under policies that include wind coverage.

8. Number of policies that exclude wind coverage.

9. Number of claims open each month.

10. Number of claims closed each month.

11. Number of claims pending each month.

12. Number of claims in which either the insurer or insured

invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

Section 3. Section 624.4305, Florida Statutes, is amended to read:

624.4305 Nonrenewal of residential property insurance policies.—Any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period shall give notice in writing to the Office of Insurance Regulation for informational purposes 90 days before the issuance of any notices of nonrenewal. The notice provided to the office must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders. The commission may adopt rules to administer this section.

Section 4. Paragraph (d) of subsection (1) of section 624.46226, Florida Statutes, is amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(d) Maintains a continuing program of excess insurance coverage and reinsurance ~~reserve evaluation~~ to protect the financial stability of the fund ~~in an amount and manner determined by a qualified and independent actuary~~. The program must, at a minimum~~, this program must~~:

1. Include a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by an independent qualified actuary;

2. Include reinsurance or ~~Purchase~~ excess insurance from authorized insurance carriers or eligible surplus lines insurers; and~~.~~

3. Be certified by a qualified and independent actuary as to the program's adequacy. This certification must be submitted simultaneously with the certifications required under paragraphs (b) and (c).

~~2. Retain a per-loss occurrence that does not exceed $350,000.~~

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority participates. Such for-profit or not-for-profit corporation, limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

Section 5. Subsection (2) of section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

(a) If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by

certified mail or registered mail, and, if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full; ~~and~~

(b) If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given, except if there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer; and

(c)1. Upon a declaration of an emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation, an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in this state.

2. However, an insurer or agent may cancel or nonrenew such a policy before the repair of the dwelling or residential property:

a. Upon 10 days' notice for nonpayment of premium; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the

claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling or residential property;

(III) If the insurer or its agent makes a reasonable written inquiry to the insured as to the status of repairs, and the insured fails within 30 calendar days to provide information that is responsive to the inquiry to either the address or e-mail account designated by the insurer; or

(IV) If the insurer has paid policy limits.

3. If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired.

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repair is completed for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations of subparagraph 1.

5. The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

Section 6. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing~~:~~

~~1.~~ must account for mitigation measures undertaken by policyholders to reduce hurricane losses and windstorm losses.

~~2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable pursuant to s. 627.0628.~~

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 7. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative

challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Twelve percent for 2023.

b. Thirteen percent for 2024.

c. Fourteen percent for 2025.

d. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to

reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. ~~The following~~ New or renewal personal lines policies that do not cover a primary residence ~~written on or after November 1, 2023,~~ are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, nor less than, the prior year's established rate for the corporation~~:~~

~~a. Policies that do not cover a primary residence;~~

~~b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or~~

~~c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631~~.

9. As used in this paragraph, the term "primary residence"

means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

Section 8. Section 628.011, Florida Statutes, is amended to read:

628.011 Scope of part.—This part applies only to domestic ~~stock~~ insurers, mutual insurers, and captive insurers, except that s. 628.341(2) applies also as to foreign and alien insurers.

Section 9. Section 628.061, Florida Statutes, is amended to read:

628.061 Investigation of proposed organization.—In connection with any proposal to organize or incorporate a domestic insurer, the office shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact.

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers, members of its subscribers' advisory committee, or officers of its attorney in fact.

(3) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Section 10. Subsections (1), (2), and (5) of section 628.801, Florida Statutes, are amended to read:

628.801 Insurance holding companies; registration;

regulation.—

(1) An insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for foreign insurers domiciled in states that are currently accredited by the NAIC. Except to the extent of any conflict with this code, the rules must include all requirements and standards of the Insurance Holding Company System Model Regulation and ss. 4 and 5 of the Insurance Holding Company System Regulatory Act ~~and the Insurance Holding Company System Model Regulation~~ of the NAIC, as adopted in December 2020 ~~2010~~. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules may include a prohibition on oral contracts between affiliated entities. Material transactions between an insurer and its affiliates must ~~shall~~ be filed with the office as provided by rule.

(2) ~~Effective January 1, 2015,~~ The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report

must, to the best of the ultimate controlling person's knowledge and belief, ~~must~~ identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must ~~shall~~ be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, a circumstance, an event, or a series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(c) The commission may adopt rules for filing the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2020.

(5) ~~Effective January 1, 2015,~~ The failure to file a registration statement, or a summary of the registration

statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

Section 11. Section 629.011, Florida Statutes, is amended to read:

629.011 Definitions ~~"Reciprocal insurance" defined.~~ As used in this part, the term:

(1) "Affiliated person" of another person means any of the following:

(a) The spouse of the other person.

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

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

(d) A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with power to vote, by the other person.

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.

(f) A director, an officer, a trustee, a partner, an owner, a manager, a joint venturer, an employee, or other person performing duties similar to those of persons in such positions.

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

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

(i) A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring, or limiting the disposition of:

1. Securities of an attorney in fact or controlling company that is a stock corporation; or

2. An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

(2) "Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

(3) "Controlling company" means a person, a corporation, a trust, a limited liability company, an association, or another entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

(4) "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

(5) "Reciprocal insurer" means unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

Section 12. Section 629.021, Florida Statutes, is repealed.

Section 13. Section 629.061, Florida Statutes, is repealed.

Section 14. Section 629.081, Florida Statutes, is amended to read:

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer by making application to the office for a permit to do so. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the office ~~and make application to the office for a certificate of authority to transact insurance~~.

(2) The permit application, to be filed by the organizers or the proposed attorney in fact, must be in writing and made in accordance with forms prescribed by the commission. In addition to any applicable requirements of s. 628.051 or other relevant statutes, the application must include all of the following ~~shall fulfill the requirements of and shall execute and file with the office, when applying for a certificate of authority, a declaration setting forth~~:

(a) The name of the proposed reciprocal insurer, which shall be in accordance with s. 629.051.~~;~~

(b) The location of the insurer's principal office, which shall be the same as that of the proposed attorney in fact and shall be maintained within this state.~~;~~

(c) The kinds of insurance proposed to be transacted.~~;~~

(d) The names and addresses of the original 25 or more subscribers.~~;~~

(e) The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of

attorney.~~;~~

(f) The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or of its members, if other than a corporation, as well as the background information as specified in s. 629.227 for all officers, directors, and equivalent positions of the proposed attorney in fact as well as for any person with ownership interests of 10 percent or more in the proposed attorney in fact.~~;~~

(g) The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.

(h) ~~(g)~~ The proposed charter powers of the subscribers' advisory committee, and the names and terms of office of the members thereof as well as the background information as specified in s. 629.227 for each proposed member.~~;~~

~~(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;~~

(i) A copy of the proposed subscribers' agreement.~~;~~

~~(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office;~~

~~(k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and~~

(j) ~~(l)~~ A copy of each policy, endorsement, and application form the insurer ~~it then~~ proposes to issue or use.

(3) The filing must be accompanied by the application fee required under s. 624.501(1)(a)and such other pertinent information and documents as reasonably requested by the office.

(4) The office shall evaluate and grant or deny the permit application in accordance with ss. 628.061, 628.071, and other relevant provisions of the code.

~~Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.~~

Section 15. Section 629.091, Florida Statutes, is amended to read:

629.091 Reciprocal certificate of authority.—

(1) A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit.

(2) To apply for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from the office may file an application for a certificate of authority in accordance with forms prescribed by the commission that, in addition to applicable requirements of ss. 624.404, 624.411, and 624.413 and other relevant statutes, consist of all of the following:

(a) Executed copies of any proposed or draft documents required as part of the permit application.

(b) A statement affirming that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers'

agreement.

(c) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office.

(d) A copy of the bond required under s. 629.121.

(e) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand.

(f) Such other pertinent information or documents as reasonably requested by the office.

(3) If the reciprocal insurer intends to issue nonassessable policies upon the receipt of a certificate of authority, and the office determines that the reciprocal insurer meets the legal requirements to issue nonassessable policies, including the surplus requirements, the office shall grant authorization for a certificate of authority. If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue or renew nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301 shall apply.

(4) The certificate of authority ~~of a reciprocal insurer~~ shall be issued ~~to its attorney~~ in the name of the reciprocal insurer to its attorney in fact.

Section 16. Section 629.094, Florida Statutes, is created to read:

629.094 Continued eligibility for certificate of

authority.—In order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer shall continue to meet all applicable conditions required for receiving the initial permit and certificate of authority under this code and the rules adopted thereunder.

Section 17. Section 629.101, Florida Statutes, is amended to read:

629.101 Power of attorney in fact.—

(1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth all of the following:

(a) The powers of the attorney.~~;~~

(b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged.~~;~~

(c) The general services to be performed by the attorney.~~;~~

(d) That the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

(e)~~(d)~~ The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer.~~; and~~

(f)~~(e)~~ Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than 5 nor more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this state unless filed with the office.

Section 18. Section 629.225, Florida Statutes, is created to read:

629.225 Acquisitions.—The provisions of this section apply to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers.

(1) A person may not, individually or in conjunction with any affiliated person of such person, directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire, 10 percent or more of the outstanding voting securities of an attorney in fact which is a stock corporation or of a controlling company of an attorney in fact which is a stock corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of an attorney in fact which is not a stock corporation or of a controlling company of an attorney which is not a stock corporation, unless all of the following conditions are met:

(a) The person or affiliated person has filed with the

office and sent to the principal office of the attorney in fact, and any controlling company of the attorney in fact, the subscribers' advisory committee, and the domestic reciprocal insurer a letter of notification regarding the transaction or proposed transaction no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved.

(b) The subscribers' advisory committee has provided the notification required under paragraph (a) on a form prescribed by the commission, explaining what the notification is and letting the subscribers know of the filing deadlines for objecting to the acquisition.

(c) The person or affiliated person has filed with the office an application signed under oath and prepared on forms prescribed by the commission which contains the information specified in subsection (4). The application must be completed and filed within 30 days after any form of tender offer or exchange offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved.

(d) The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved.

(2) This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact

or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the office under this section or s. 629.091.

(3) The person or affiliated person filing the notice required by paragraph (1)(a) may request that the office waive the requirements of paragraph (1)(b), provided that there is no change in the ultimate controlling shareholders, and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties acquire any direct or indirect interest in the attorney in fact. The office may waive the filing required by paragraph (1)(b) if it determines that there is no change in the ultimate controlling shareholders, and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties will acquire any direct or indirect interest in the attorney in fact.

(4) The application to be filed with the office and furnished to the attorney in fact must contain the following information and any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public:

(a) The identity and background information specified in s. 629.227 of:

1. Each person by whom, or on whose behalf, the acquisition is to be made; and

2. Any person who controls, directly or indirectly, such other person, including each director, officer, trustee, partner, owner, manager, or joint venturer, or other person

performing duties similar to those of persons in such positions, for the person.

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

(c) Any plans or proposals which such persons may have made to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management.

(d) The nature and the extent of the controlling interest which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation.

(e) The number of shares or other securities which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.

(f) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the attorney in fact or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(g) The filing must be accompanied by the fee required

under s. 624.501(1)(a).

(5) If any material change occurs in the facts provided in the application filed with the office pursuant to this section or the background information required under s. 629.227, an amendment specifying such changes must be filed immediately with the office, and a copy of the amendment must be sent to the principal office of the attorney in fact and to the principal office of the controlling company.

(6)(a) The acquisition application must be reviewed in accordance with chapter 120. The office may on its own initiate, or, if requested to do so in writing by a substantially affected person, shall conduct a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the office within 10 days after the date notice of the filing is given, or 10 days after notice of the filing is sent to the subscribers by the subscribers advisory committee, whichever is later. During the pendency of the proceeding or review period by the office, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining office approval. However, at any time it finds an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the office shall immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's review of any acquisition subject to the provisions of this section, the acquiring person may not make any material change in the operation of the attorney in fact or controlling company unless the office has specifically approved the change, nor shall the acquiring person make any material change in the management of the attorney in fact unless advance written notice of the change in management is furnished to the office. The term "material change in the operation of the attorney in fact" means a transaction that disposes of or obligates 5 percent or more of the capital and surplus of the attorney in fact or of any domestic reciprocal insurer. The term "material change in the management of the attorney in fact" means any change in management involving officers or directors of the attorney in fact or any person of the attorney or controlling company having authority to dispose of or obligate 5 percent or more of the attorney in fact's capital or surplus. The office shall approve a material change in operations if it finds the applicable provisions of subsection (7) have been met. The office may disapprove a material change in management if it finds that the applicable provisions of subsection (7) have not been met and in such case the attorney in fact shall promptly change management as acceptable to the office.

(c) If a request for a proceeding is filed, the proceeding must be conducted within 60 days after the date the written request for a proceeding is received by the office. A recommended order must be issued within 20 days after the date of the close of the proceedings. A final order shall be issued within 20 days after the date of the recommended order or, if

exceptions to the recommended order are filed, within 20 days after the date the exceptions are filed.

(7) The office may disapprove any acquisition subject to this section by any person or any affiliated person of such person who:

(a) Willfully violates this section;

(b) In violation of an order of the office issued pursuant to subsection (11), fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (12), acquires an additional stock or ownership interest in an attorney in fact or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(8) The person or persons filing the application required by this section have the burden of proof. The office shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed application if no proceeding is conducted, that:

(a) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or the public.

(b) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

1. To liquidate the attorney in fact, sell its assets, or

merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management is fair and free of prejudice to the reciprocal insurer's subscribers or to the public; or

2. To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the attorney in fact, is fair and free of prejudice to the reciprocal insurer's subscribers or to the public.

(c) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the attorney in fact indicate that the acquisition is in the best interest of the reciprocal insurer's subscribers and in the public interest.

(d) The natural persons for whom background information is required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the reciprocal insurer's subscribers and in the public interest to permit such persons to exercise control over the attorney in fact.

(e) The directors and officers, if such attorney in fact or controlling company is a stock corporation, or the trustees, partners, owners, managers, joint venturers, or other persons performing duties similar to those of persons in such positions, if such attorney in fact or controlling company is not a stock corporation, to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation.

(f) The management of the attorney in fact after the acquisition will be competent, trustworthy, and will possess sufficient managerial experience so as to make the proposed operation of the attorney in fact not hazardous to the insurance-buying public.

(g) The management of the attorney in fact after the acquisition shall not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto.

(h) The acquisition is not likely to be hazardous or prejudicial to the reciprocal insurer's subscribers or to the public.

(i) The effect of the acquisition would not substantially lessen competition in the line of insurance for which the reciprocal insurer is licensed or certified in this state or would not tend to create a monopoly therein.

(9) A vote by the stockholder of record, or by any other person, of any security acquired in contravention of this section is not valid. Any acquisition contrary to this section is void. Upon the petition of the attorney in fact, any or the controlling company, or the reciprocal insurer the circuit court for the county in which the principal office of the attorney in fact is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce this section. There shall be a private right of action in favor of the attorney in fact, or controlling company, to enforce this section. A demand upon the office that it

performs its functions may not be required as a prerequisite to any suit by the attorney in fact or controlling company against any other person, and in no case shall the office be deemed a necessary party to any action by the attorney in fact or controlling company to enforce this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, shall be deemed to have thereby designated the Chief Financial Officer, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this section and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

(10) Any approval by the office under this section does not constitute a recommendation by the office of the tender offer or exchange offer, or acquisition, if no tender offer or exchange offer is involved. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute of limitations period for the prosecution of an offense committed under this subsection is 5 years.

(11) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the attorney in fact as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party

may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the attorney in fact is relieved of any duty to register or report under this section which may arise out of the attorney in fact's relationship with the person unless the office disallows the disclaimer.

(12) If the office determines that any person or any affiliated person of such person has acquired 10 percent or more of the outstanding voting securities of an attorney in fact or controlling company which is a stock corporation, or 10 percent or more of the ownership interest of an attorney in fact or controlling company which is not a stock corporation, without complying with this section, the office may order that the person and any affiliated person of such person cease acquisition of the attorney in fact or controlling company and, if appropriate, divest itself of any stock or ownership interest acquired in violation of this section.

(13)(a) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

(b) If any reciprocal insurer is subject to suspension or revocation pursuant to paragraph (a), any other reciprocal insurer using the same attorney in fact shall also be subject to suspension or revocation. In such case, the office may offer any affected reciprocal insurer, through its subscriber representatives, the ability to cure any suspension or

revocation by procuring another attorney in fact acceptable to the office or taking any other action agreed to by the office.

Section 19. Section 629.227, Florida Statutes, is created to read:

629.227 Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to s. 629.081 or s. 629.225 must include, but need not be limited to:

(1) A sworn biographical statement on forms adopted by the commission that shall include, but not be limited to, the following information:

(a) Occupations, positions of employment, and offices held during the past 20 years, including the principal business and address of any business, corporation, or organization where each occupation, position of employment, or office occurred.

(b) Whether the person was, at any time during such 10-year period, convicted of any crime other than a traffic violation.

(c) Whether the person has been, during such 10-year period, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

(d) Whether, during such 10-year period, the person has been the subject of any proceeding under the federal Bankruptcy Act.

(e) Whether, during such 10-year period, any person or other business or organization in which the person was a director, officer, trustee, partner, owner, manager, or other official has been subject of any proceeding under the federal Bankruptcy Act, either during the time of that person's tenure

with the business or organization or within 12 months thereafter.

(f) Whether, during such 10-year period, the person has been enjoined, temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(g) Whether, during such 20-year period, the person served as the attorney in fact, a subscribers' advisory committee member, or any other manager or officer of a reciprocal insurer or an insurer that became insolvent or had its certificate of authority suspended or revoked.

(2) Fingerprints of each person.

(3) Authority for release of information in regard to the investigation of such person's background.

(4) Any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public.

Section 20. Section 629.229, Florida Statutes, is created to read:

629.229 Attorney in fact, officers, and directors of insolvent reciprocal insurers or other insurers.—Any person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, any member of a subscribers' advisory committee of a reciprocal insurer doing business in

this state, or an officer or director of any other insurer doing business in this state, and who served in that capacity within the 2-year period before the date the insurer or reciprocal insurer became insolvent, for any insolvency that occurs on or after July 1, 2024, may not thereafter:

(1) Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact, or a member of a subscribers advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state; or

(2) Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact, or a member of the subscribers committee of a reciprocal insurer doing business in this state, or an officer or director of any insurer doing business in this state, through contract, trust, or by operation of law,

unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 21. Section 629.261, Florida Statutes, is amended to read:

629.261 Nonassessable policies.—Upon impairment of the surplus of a nonassessable reciprocal insurer, the office shall revoke the authorization issued under s. 629.291(5) or s. 629.091(3).

~~(1) If a reciprocal insurer has a surplus as to policyholders required of a domestic stock insurer authorized to~~

~~transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the office shall issue its certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.~~

~~(2) Upon impairment of such surplus, the office shall forthwith revoke the certificate.~~ Such revocation does ~~shall~~ not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but, after such revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

~~(3) The office shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that, if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.~~

Section 22. Section 629.291, Florida Statutes, is amended to read:

629.291 Merger or conversion.—

(1) A ~~domestic~~ reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice, and subject to ~~the~~ approval by ~~of the~~ office of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer, to be thereafter governed by the applicable sections of the insurance code. However, a domestic stock insurer may not convert to a reciprocal insurer.

(2) A plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer shall be filed on forms adopted by the office and contain such information as the office reasonably requires to evaluate the transaction ~~Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance~~.

(3) The office may ~~shall~~ not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer, as determined in accordance with s. 629.281, and a reasonable length of time within which to exercise such right.

(4) Reinsurance of all or substantially all of the insurance in force of a ~~domestic~~ reciprocal insurer in another insurer shall be deemed to be a merger for the purposes of this section.

(5)(a) An assessable reciprocal insurer may convert to a

nonassessable reciprocal insurer if:

1. The subscribers' advisory committee approves the conversion;

2. The attorney in fact submits the application for conversion on the required application form; and

3. The office finds that the application for conversion meets the minimum statutory requirements.

(b) If the office approves the application for conversion, the assessable reciprocal insurer may convert to a nonassessable reciprocal insurer by:

1. Extinguishing the contingent liability of subscribers under all policies then in force in this state;

2. Omitting contingent liability provisions in all policies delivered or issued in this state after the conversion; and

3. Otherwise extinguishing the contingent liability of all of its subscribers. However, if the reciprocal insurer is transacting insurance as an authorized insurer in another state and that state's laws require the insurer to issue policies with contingent liability provisions, the insurer may issue contingent liability policies in that other state.

(c) If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301 shall apply.

Section 23. Section 629.525, Florida Statutes, is created to read:

629.525 Rulemaking authority.—The commission shall adopt, amend, or repeal rules necessary to implement this chapter.

Section 24. Paragraph (h) of subsection (3) of section

163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~ or any self-insurance program created pursuant to s. 768.28(16), formed and controlled by counties or municipalities of this state to provide liability insurance coverage for counties, municipalities, or other public agencies of this state, which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

Section 25. Subsection (3) of section 626.9531, Florida Statutes, is amended to read:

626.9531 Identification of insurers, agents, and insurance contracts.—

(3) For the purposes of this section, the term "risk bearing entity" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~, a commercial self-insurance fund as defined in s. 624.462, a group self-insurance fund as defined in s. 624.4621, a local government self-insurance fund as defined in s. 624.4622, a self-insured public utility as defined in s. 624.46225, or an independent educational institution self-insurance fund as defined in s. 624.4623. For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

Section 26. This act shall take effect July 1, 2024.

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 Fiscal Policy

BILL:	CS/SB 1638
INTRODUCER:	Fiscal Policy Committee and Senator Hutson
SUBJECT:	Funding for Environmental Resource Management
DATE:	February 19, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reagan	Betta	AEG	**Favorable**
2.	Reagan	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1638 provides that 96 percent of the revenues from the 2021 gaming compact between the Seminole Tribe of Florida and the State of Florida for the acquisition and management of conservation lands and the identification and prioritization of critical clean water infrastructure investments be deposited in the Indian Gaming Revenue Trust Fund within the Department of Financial Services.

- Provides for the distribution of funds as follows:
  - $100 million to support the wildlife corridor. Eligible state agencies may submit budget amendments on a first come-first serve basis with the release of funds contingent upon approval.
  - $100 million for the management of uplands and the removal of invasive species, which is divided as follows:
    - $36 million to the Department of Environmental Protection (DEP), of which:
      - $32 million for state park land management activities;
      - $4 million for implementation of the Local Trail Management Grant Program;
    - $32 million to the Department of Agriculture and Consumer Services for land management activities;
    - $32 million to the Fish and Wildlife Conservation Commission for land management activities;
  - $100 million to the DEP to the Resilient Florida Trust Fund;
  - The remainder to the DEP to the Water Protection and Sustainability Program Trust Fund.

- Requires the Land Management Uniform Accounting Council to recommend the most efficient use of land management funds provided to state agencies and submit its recommendation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 3, 2027.
- Appropriates $2 million from the General Revenue Fund to the University of Florida to continually update the Florida Wildlife Corridor plan and the Florida Ecological Greenways Network plan.
- Appropriates $5 million to the DEP to coordinate with the Water School at Florida Gulf Coast University to conduct a study to identify and analyze potential regional projects that meet the eligibility requirements of the Water Quality Improvement Grant Program.
- Appropriates $150 million from the General Revenue Fund to the South Florida Water Management District (SFWMD) for operations and maintenance. The SFWMD shall enter into a contract with the Water School and Florida Gulf Coast University to conduct a study of the health and ecosystem of Lake Okeechobee.

The bill has a significant negative fiscal impact to state revenues and expenditures. See Section V., Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

2021 Gaming Compact

Gaming compacts are regulated by the Federal Indian Gaming Regulatory Act, s. 25 U.S.C. 2701, et seq., and ch. 285, part II, F.S. The State of Florida (state) entered into a gaming compact with the Seminole Tribe of Florida (Seminole Tribe) on April 7, 2010 (the 2010 Compact). In ch. 2021-268, Laws of Florida (CS/SB 2A), the Legislature ratified a new Gaming Compact between the Seminole Tribe and the state, which was executed by Governor Ron DeSantis and the Seminole Tribe on April 23, 2021, as amended on May 17, 2021 (the 2021 Compact). The 2021 Compact was approved by the United States Department of the Interior on August 6, 2021, and became effective upon the publication of notice in the Federal Register. The 2021 Compact supersedes the 2010 Compact.

Revenue Sharing under the 2021 Gaming Compact

The 2021 Compact establishes a guarantee minimum payment period for the first five years of the compact. During the five year period, the Seminole Tribe is to make guaranteed minimum revenue share payments as specified, to total $2.5 billion. The revenue share payments must be paid by the Seminole Tribe to the state as follows:

- Percentage payments for slots, raffles, drawings, and new games range from 12 percent of net win[1] up to $2 billion, to 25 percent of net win greater than $3.5 billion.

[1] The term "Net Win" is defined in the 2010 Gaming Compact and the 2021 Gaming Compact as "the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe." See 2021 Gaming Compact Part III, Section T, available at https://www.seminolecompact.com/ (last visited Jan. 22, 2024).

- Percentage payments for table games range from 15 percent of net win up to $1 billion, to 25 percent of net win greater than $2 billion.
- Percentage payment for tribal sports betting is 13.75 percent of net win excluding the net win received by the Seminole Tribe on pari-mutuel sports betting.
- Percentage payment for pari-mutuel sports betting is 10 percent of net win received by the Seminole Tribe on pari-mutuel sports betting.
- The Seminole Tribe's guaranteed minimum revenue share payment is $400 million per year for the first five years.
- At the end of the third year of the five year guaranteed minimum payment period, if the total revenue share payments are less than $1.5 billion, the Seminole Tribe must pay the difference to the state.
- At the end of the fifth year of the five year guaranteed minimum payment period, if the total revenue share payments are less than $2.5 billion, the Seminole Tribe must pay the difference to the state.

The specific revenue share payment amounts paid by the Seminole Tribe to the state will be calculated as outlined in the chart below in accordance with the 2021 Compact.

SUMMARY OF REVENUE SHARE PAYMENTS -2021 Gaming Compact (Revenue Share Payments by the Seminole Tribe to the State)
Net Win - Slots, Raffles and Drawings; New Games, if Authorized by the State
$0-2B: 12%;
$2-2.5B: 17.5%
$2.5-3B: 20%
$3-3.5B: 22.5%
$3.5B+: 25%
Net Win - Slots, Raffles and Drawings; New Games, if Authorized by the State
$0-1B: 15%;
$1-1.5B: 17.5%
$1.5-2B: 22.5%
$2B+: 25%
Net Win – Sports Betting
Guaranteed Minimum Compact Term Payment of $2.5B (Two billion, five hundred million dollars) (includes all Revenue Share Payments for the first five years of the 2021 Gaming Compact)

Litigation

The State of Florida began receiving Indian Gaming payments pursuant to the 2021 Compact in October of 2021. The U.S. District Court for the District of Columbia set aside federal approval of the 2021 Compact on November 22, 2021. The Seminole Tribe of Florida continued revenue sharing with the State of Florida through February 2022, after which time they discontinued all payments. Between October 2021 and February 2022, the state received five payments of $37.5 million, totaling $187.5 million[2]

[2] *See* the review of the Indian Gaming Revenues by the Revenue Estimating Conference/Impact Conference at http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf (last visited Jan. 16, 2024). The Office of Economic and Demographic Research (EDR) is a research arm of the Legislature principally concerned with

Litigation relating to the legality of the 2021 Gaming Compact is currently pending in the Florida Supreme Court, challenging actions taken by the Florida Legislature and Governor to expand casino gambling in Florida in violation of the Florida Constitution (specifically Amendment 3 adopted in 2018, now Article X, Section 30 to the Florida Constitution). The challenged actions include execution and ratification of the 2021 Gaming Compact and enactment of implementing legislation, particularly as to sports betting.

In addition, there is a proceeding pending in the U.S. Supreme Court challenging the legality of the 2021 Gaming Compact, but that court has not yet determined to accept the case.

Conservation Lands

Article X, section 18 of the Florida Constitution requires that "the fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state…"[3]

Conservation Land Management

The Board of the Internal Improvement Trust Fund (board) is charged with the management, control, supervision, conservation, and protection of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards or commissions.[4] Section 253.034, F.S., specifies that state lands acquired pursuant to ch. 259, F.S., are required to be managed to ensure the conservation of the state's plant and animal species and to ensure the accessibility of state lands for the benefit and enjoyment of all people of the state, both present and future.[5] Additionally, all lands acquired and managed under ch. 259, F.S., are required to be managed in a manner that provides the greatest combination of benefits to the public and to the resources, for public outdoor recreation which is compatible with the conservation and protection of public lands, and for the purposes for which the lands were acquired.[6]

The board is authorized to enter into leases or similar instruments for the use, benefit, and possession of public lands by agencies which may properly use and possess such lands for the benefit of the state.[7] The Fish and Wildlife Conservation Commission is the main land management entity for the state. The Department of Agriculture and Consumer Services (DACS) and the DEP also manage state lands.[8]

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forecasting economic and social trends that affect policy making, revenues, and appropriations. At the request of the legislative committees or other members of an estimating conference, EDR conducts impact assessments of proposed policy changes. Often, EDR's estimates are incorporated in the committee bill analysis or fiscal note. In some cases, committees will request EDR to take a particular proposal to a consensus estimating conference to obtain an impact estimate that is formally agreed to by both houses of the Legislature and by the Governor's Office.

[3] FLA. CONST. art. X, s. 18.

[4] Section 253.03, F.S.

[5] Section 253.034(5)(a), F.S.

[6] Section 259.032(7), F.S.; s. 259.032(7)(a)2, F.S., provides that "such management may include, but not be limited to, the following public recreational uses: fishing, hunting, camping, bicycling, hiking, nature study, swimming, boating, canoeing, horseback riding, diving, model hobbyist activities, birding, sailing, jogging, and other related outdoor activities compatible with the purposes for which the lands were acquired."

[7] Section 253.03(2), F.S.

[8] See Land Management Uniform Accounting Council Annual Report (last visited Jan. 22, 2024).

Each manager of conservation lands is required to submit a land management plan to the division at least every 10 years.[9] The land management plan must contain, at a minimum, all of the following elements:

- A physical description of the land.
- A quantitative data description of the land which includes an inventory of forest and other natural resources; exotic and invasive plants; hydrological features; infrastructure, including recreational facilities; and other significant land, cultural, or historical features.
- A detailed description of each short-term and long-term land management goal, the associated measurable objectives, and the related activities that are to be performed to meet the land management objectives.
- A schedule of land management activities which contains short-term and long-term land management goals and the related measurable objective and activities.
- A summary budget for the scheduled land management activities of the land management plan. For state lands containing or anticipated to contain imperiled species habitat, the summary budget shall include any fees anticipated from public or private entities for projects to offset adverse impacts to imperiled species or such habitat, which fees shall be used solely to restore, manage, enhance, repopulate, or acquire imperiled species habitat. [10] The summary budget is required to be prepared in such a manner that it facilitates computing an aggregate of land management costs for all state-managed lands using the following categories:
  - Resource management;
  - Administration;
  - Support;
  - Capital improvements;
  - Recreation visitor services; and
  - Law enforcement activities.[11]

Each land management plan is required to provide a desired outcome, describe both short-term and long-term management goals, and include measurable objectives to achieve those goals.[12] Short-term goals are required to be achievable within a two-year planning period, and long-term goals are required to be achievable within a 10-year planning period.[13] These short-term and long-term management goals are the basis for all subsequent land management activities.[14]

Short-term and long-term management goals must include measurable objectives for the following, as appropriate:

- Habitat restoration and improvement.
- Public access and recreational opportunities.
- Hydrological preservation and restoration.
- Sustainable forest management.
- Exotic and invasive species maintenance and control.
- Capital facilities and infrastructure.

[9] Section 253.034(5), F.S.
[10] *Id*.
[11] Section 259.037(3)(a), F.S.
[12] Section 253.034(5)(a), F.S.
[13] *Id*.
[14] *Id*.

- Cultural and historical resources.
- Imperiled species habitat maintenance, enhancement, restoration, or population restoration.[15]

Land management plans are required to be updated every 10 years on a rotating basis.[16] Each manager of conservation lands is required to update a land management plan whenever the manager proposes to add new facilities or make substantive land use or management changes that were not addressed in the approved plan, or within one year of the addition of significant new lands.[17]

Regional land management review teams are required to evaluate the extent to which the existing management plan provides sufficient protection to threatened or endangered species, unique or important natural or physical features, geological or hydrological functions, or archaeological features, and the extent to which the land is being managed for the purposes for which it was acquired and the degree to which actual management practices, including public access, are in compliance with the adopted management plan.[18]

If the land management review team determines that reviewed lands are not being managed for the purposes for which they were acquired or in compliance with the adopted land management plan, management policy statement, or management prospectus, or if the managing agency fails to address the review findings in the updated management plan, the department is required to provide the review findings to the board, and the managing agency must report to the board its reasons for managing the lands as it has.[19] The manager of the land is required to consider the findings and recommendations of the land management review team in finalizing the 10-year update of the land management plan.[20]

By July 1 of each year, each governmental agency and each private entity designated to manage lands is required to report to the department on the progress of funding, staffing, and resource management of every project for which the agency or entity is responsible.[21] The use or possession of any such lands that is not in accordance with an approved land management plan is subject to termination by the board.[22]

Rural and Family Lands Protection Program

The Rural and Family Lands Protection Program (RFLPP) within the DACS is an agricultural land preservation program designed to protect agricultural lands through the acquisition of conservation easements. The DACS is authorized to enter into conservation easements for any of the following purposes:

- Promotion and improvement of wildlife habitat;
- Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;

[15] Section 253.034(5)(b), F.S.
[16] Section 253.034(5)(e), F.S.
[17] Section 253.034(5), F.S.
[18] Section 259.036(3), F.S.
[19] Section 259.036(5), F.S.
[20] Section 259.036(2), F.S.
[21] Section 259.032(8), F.S.
[22] Section 253.034(5)(h), F.S.

- Perpetuation of open space on lands with significant natural areas; or
- Protection of agricultural lands threatened by conversion to other uses.

The DACS developed a priority list in 2023, which includes a total of 392,670 acres and divides the 258 projects into three tiers.[23]

Florida Greenways and Trails System

In 1995, the Legislature created the Florida Greenways Coordinating Council (FGCC), tasking the FGCC with promoting the creation of a statewide greenways and trails system and designating the Department of Environmental Protection (DEP) as the lead agency of the system.[24] The FGCC published a five-year implementation plan for the Florida Greenways and Trails System (FGTS) in 1998.[25] The plan contained a multiuse recreational Opportunity Trail Map for connecting Florida's greenways and trails, providing a review of existing greenways and trails and making recommendations to complete the system.

In 1999, the Legislature created the Florida Greenways and Trails Council (the Council) as recommended by the 1998 Plan. Among other duties, the Council, then and now, facilitates establishment and expansion of a statewide system of greenways and trails for recreational and conservation purposes, including:

- Recommending priorities for critical links in the FGTS;
- Reviewing recommendations for acquisition funding;
- Reviewing proposals for lands to be designated as part of the FGTS; and
- Recommending updates to the implementation plan for the FGTS.[26]

In 2013, the DEP published the *2013-2017 Florida Greenways and Trails System Plan*, the first update to the FGTS since the 1998 Plan was published.[27] The Office of Greenways and Trails (OGT)[28] within the DEP, using the 1998 Land Trails Opportunity Map, established criteria to help identify priority land trail corridors within the FGTS, as opposed to priority segments, allowing for identification of potential long-distance trail corridors. The multi-county approach assisted in identification of gaps in connectivity across jurisdictional boundaries and in

[23] See *DACS 2023 RFLPP Projects Rankings*, January 8, 2024, (on file with Appropriations Committee on Agriculture, Environment, and General Government).
[24] Chapter 95-260, L.O.F.
[25] Executive Summary available at FDEP, *Connecting Florida Communities with Greenways and Trails Plan: A Summary of the Five Year Implementation Plan for the Florida Greenways and Trails System* (1998), available at 1998FGTSPlanExecutiveSummary_0.pdf (floridadep.gov) (last visited Jan. 16, 2024).
[26] Section 260.0142(4), F.S.
[27] DEP, *Florida Greenways & Trails System Plan 2019-2023*, at p. 6, available at FL-Greenway+Trails-System-Plan-(floridadep.gov) (last visited Jan. 16, 2024).
[28] The OGT is tasked with fulfilling ch. 260, F.S., the Florida Greenways and Trails Act. The Office leads, plans, and facilitates the development of an interconnected FGTS, through coordinated efforts with state and local partners, to compile local trails data from cities, counties, and other land managing entities into one inclusive system. *Id.* at p. 4.

encouraging regional planning to close those gaps.[29] The FGTS Plan and Maps are currently undergoing a third update for the 2024-2028 Fiscal Years.[30]
The DEP is authorized to acquire lands, both public and private, to establish and expand a statewide system of greenways and trails for recreational and conservation purposes, using funds from the Florida Forever Trust Fund distributed to the DEP for acquisition of lands under the Florida Greenways and Trails Program, and to designate lands as part of the FGTS.[31]

Florida Wildlife Corridor

The 2021 Legislature created the Florida Wildlife Corridor Act to "create incentives for conservation and sustainable development while sustaining and conserving green infrastructure that acts as the foundation of the state's economy and quality of life."[32] The Legislature also appropriated $300 million,[33] directing the FDEP to encourage and promote investments in areas that protect and enhance the Wildlife Corridor by establishing a "network of connected wildlife habitats required for the long-term survival of and genetic exchange amongst regional wildlife populations which serves to prevent fragmentation by providing ecological connectivity of the lands needed to furnish adequate habitats and allow safe movement and dispersal."[34]

The Florida Wildlife Corridor (Wildlife Corridor) is statutorily defined as "the conserved lands"[35] and "opportunity areas"[36] defined by the FDEP as priority one, two, and three categories of the Florida Ecological Greenways Network (FEGN).[37] The FEGN "is the primary data layer used to inform the Florida Forever and other state, federal, and regional land acquisition programs regarding the most important ecological corridors and intact landscapes across the state

[29] DEP, *Florida Greenways & Trails System Plan 2019-2023*, at p. 6, available at FL-Greenway+Trails-System-Plan-(floridadep.gov) (last visited Jan. 16, 2024). The DEP's resulting Land Trails Opportunity Maps are "the state companion to community greenways and trails and bicycle and pedestrian master plans, and [encompass] a combination of paved and unpaved, multiple and single-use trails."
[30] *See* the 2024-2028 FGTS Plan and Maps Update Schedule at DEP, *Florida Greenways and Trails System Plan and Maps*, available at Florida Greenways and Trails System Plan and Maps | Florida Department of Environmental Protection (last visited Jan. 16, 2024).
[31] Chapter 260 and s. 259.105(3)(h), F.S. "Designation" of lands means the identification and inclusion of specific lands and waterways as part of the statewide system of greenways and trails pursuant to a formal public process, including the specific written consent of the landowner when private property is to be used for trail purposes. When the DEP determines that public access is appropriate for greenways and trails, written authorization must be granted by the landowner to the DEP permitting public access to all or a specified part of the landowner's property. Section 260.013(3), F.S. The processes for solicitation, application, evaluation, and selection of lands to be acquired or developed, and for designation of public conservation or recreational lands and waterways and for private lands and waterways, are set out in Fla. Admin. Code R. 62S-1.
[32] Section 259.1055(3), F.S.
[33] Chapter 2021-37. L.O.F., s. 152.
[34] Section 259.1055(4)(g), F.S.
[35] Defined in s. 259.1055(4)(a), F.S., to mean "federal, state, or local lands owned or managed for conservation purposes, including, but not limited to, federal, state, and local parks; federal and state forests; wildlife management areas; wildlife refuges; military bases and airports with conservation lands; properties owned by land trust and managed for conservation; and privately owned land with a conservation easement, including, but not limited to, ranches, forestry operations, and groves."
[36] Section 259.1055(4)(e), F.S., states "[T]hose lands and waters within the Florida wildlife corridor which are not conserved lands and the green spaces within the Florida wildlife corridor which lack conservation status, are contiguous to or between conserved lands, and provide an opportunity to develop the Florida wildlife corridor into a statewide conservation network."
[37] Section 259.1055(4)(d), F.S. For a 2021 layered map reflecting the Wildlife Corridor, Florida Forever Projects and Acquisitions, and FEGN Priority Levels 1-3, *see* the FDEP's map available at Florida Forever and Florida Ecological Greenways Network (FEGN) (floridadep.gov) (last visited Jan. 22, 2024).

for protection of Florida's native wildlife, ecosystem services, and ecological resiliency."[38] The priority-category lands "are the most important for protecting [an] ecologically functional connected statewide network of public and private conservation lands."[39, 40]

The DEP notes that the existing Wildlife Corridor "encompasses nearly 17.7 million acres – 9.6 million acres (54%) that are already protected and 8.1 million acres (46%) of remaining opportunity areas that do not have conservation status."[41] Further, "There are 1.46 million acres within the Florida Wildlife Corridor opportunity area that are a high priority for conservation through the State's Florida Forever program."[42]

The Resilient Florida Grant Program

The Florida Legislature has established several statewide resilience programs, including the Resilient Florida Grant Program, the Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set, and the Statewide Flooding and Sea Level Rise Resilience Plan.

The Resilient Florida Grant Program provides grants to counties or municipalities for community resilience planning, including vulnerability assessments, plan development, and projects to adapt critical assets.[43] In the program's first two years, 263 implementation projects were awarded a total of nearly $954 million.[44] Vulnerability assessments funded through this program must encompass the entire county or municipality; use the most recent publicly available Digital Elevation Model and dynamic modeling techniques, if available; and analyze the vulnerability of and risks to critical assets,[45] including regionally significant assets.[46] In addition, vulnerability assessments must include, where applicable:

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[38] FDEP, *Florida Wildlife Corridor*, available at https://floridadep.gov/sites/default/files/Florida_Wildlife_Corridor.pdf (last visited Jan. 22, 2024).
[39] Florida Natural Areas Inventory (FNAI), *Florida Natural Areas Inventory Geospatial Open Data, Summary*, available at FEGN2021 | Florida Natural Areas Inventory (fnai.org) (last visited Jan. 22, 2024). The FNAI provides scientific support to the FDEP.
[40] Section 259.1055(4)(c), F.S., defines the FEGN as "a periodically updated model developed to delineate large connected areas of statewide ecological significance."
[41] Florida Wildlife Corridor Foundation, *About the Corridor*, available at About The Corridor - The Florida Wildlife Corridor (last visited Jan. 22, 2024).
[42] Section 259.105, F.S., sets out the Florida Forever Act. "Florida Forever is Florida's premier conservation and recreation lands acquisition program; a blueprint for conserving Florida' natural and cultural heritage." *See* FDEP, *Florida Forever,"* for additional information, available at Florida Forever | Florida Department of Environmental Protection (last visited Jan. 22, 2024).
[43] Section 380.093(2)(a), F.S. "Critical asset" is defined to include broad lists of assets relating to transportation, critical infrastructure, emergency facilities, natural resources, and historical and cultural resources.
[44] This figure includes $270 million of state funding for the Statewide Flooding and Sea Level Resilience Plan. DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources* (Feb. 23, 2023), *available at* https://www.flsenate.gov/Committees/Show/SSHR/MeetingPacket/5700/10150_MeetingPacket_5700_2.23.23.pdf.
[45] Critical assets include transportation assets and evacuation routes (airports, bridges, bus terminals, major roadways, etc.), critical infrastructure (wastewater and stormwater treatment facilities, drinking water facilities, solid and hazardous waste facilities, etc.), critical community and emergency facilities (schools, correctional facilities, fire stations, hospitals, etc.), and natural, cultural, and historical resources (conservation lands, parks, shorelines, wetlands, etc.). Section 380.093(2)(a), F.S.
[46] Section 380.093(3)(c), F.S. Regionally significant assets are critical assets that support the needs of communities spanning multiple geopolitical jurisdictions. Section 380.093(2)(d), F.S.

- Peril of flood comprehensive plan amendments that address the requirements of s. 163.3178(2)(f), F.S.,[47] if the county or municipality is subject to, but has not complied with, such requirements;
- The depth of tidal flooding, current and future storm surge flooding, rainfall-induced flooding (including for a 100-year and 500-year storm), and compound flooding or the combination of tidal, storm surge, and rainfall-induced flooding; and
- The following scenarios and standards:
  - All analyses in the North American Vertical Datum of 1988;[48]
  - At least two local sea level rise scenarios, which must include the 2017 NOAA intermediate-low and intermediate-high sea level rise projections;
  - At least two planning horizons that include planning horizons for the years 2040 and 2070; and
  - Local sea level data that has been interpolated between the two closest NOAA tide gauges.[49]

The Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment will provide information necessary to determine the risks to inland and coastal communities.[50] By July 1, 2023, the DEP must develop a data set providing statewide sea level rise projections and information necessary to determine the risks of flooding and sea level rise to inland and coastal communities. By July 1, 2024, the DEP must develop a statewide assessment (using the statewide data set) identifying vulnerable infrastructure, geographic areas, and communities. The statewide assessment must include an inventory of critical assets and be updated every five years.[51]

The Statewide Flooding and Sea Level Rise Resilience Plan consists of ranked projects that address risks of flooding and sea level rise to coastal and inland communities.[52] Examples of projects include construction of living shorelines, seawalls, and pump stations, elevation projects, and infrastructure hardening.[53] Counties, municipalities, water management districts, regional water supply authorities, and other entities may submit to the DEP an annual list of proposed projects. Each project must have a minimum 50 percent cost share, unless the project

[47] This section provides that, in communities abutting the Gulf of Mexico or Atlantic Ocean or other coastal areas defined by statute, a local government's comprehensive plan must include a coastal management element. Sections 163.3178(2) and 163.3177(6)(g), F.S. This element must contain a redevelopment component that outlines the principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise. Section 163.3178(2)(f), F.S.
[48] A vertical datum is a surface of zero elevation to which heights of various points are referenced. Traditionally, vertical datums have used classical survey methods to measure height differences (i.e. geodetic leveling) to best fit the surface of the earth. The current vertical datum for the contiguous United States and Alaska is the North American Vertical Datum of 1988. NOAA, *National Geodetic Survey: Vertical Datums*, https://www.ngs.noaa.gov/datums/vertical/#:~:text=TABLE%201%3A%20Current%20Vertical%20Datums%20for%20United%20States,%20%202002-present%20%201%20more%20rows%20 (last visited Jan. 18, 2024).
[49] Section 380.093(3)(d)
[50] Section 380.093(4), F.S.; DEP, *Resilient Florida Program – Statewide Assessment*, https://floridadep.gov/rcp/resilient-florida-program/content/resilient-florida-program-statewide-assessment (last visited Jan. 18, 2024).
[51] *Id. See also* DEP, *Resilient Florida Program – Statewide Assessment*.
[52] Section 380.093(5), F.S.
[53] DEP, *2023-2024 Statewide Flooding and Sea Level Rise Resilience Plan*, *available at* https://floridadep.gov/sites/default/files/2023-24%20Statewide%20Flooding%20and%20Sea%20Level%20Rise%20Resilience%20Plan_0.pdf.

assists or is within a financially disadvantaged community.[54] The DEP ranks the projects using a four-tier scoring system.[55] The DEP has adopted rules to implement s. 380.093, F.S., relating to the Statewide Flooding and Sea Level Rise Resilience Plan and project submittal requirements. These rules can be found in Chapter 62S-8 of the Florida Administrative Code.[56] In December 2022, the DEP submitted the FY 23-24 Statewide Flooding and Sea Level Rise Resilience Plan totaling nearly $408 million over the next three years.[57]

The DEP may also provide funding for regional resilience entities to assist local governments with planning for the resilience needs of communities and coordinating intergovernmental solutions to mitigate adverse impacts of flooding and sea level rise.[58] As of February 2023, $4 million had been appropriated to regional resilience entities.[59]

In 2022, the Statewide Office of Resilience was created within the Executive Office of the Governor for the purpose of reviewing all flood resilience and mitigation activities in the state and coordinating flood resilience and mitigation efforts with federal, state, and local governmental entities and other stakeholders. The office's Chief Resilience Officer and the DEP worked together to provide the Governor and the Legislature with a report on flood resilience and mitigation efforts across Florida.[60]

Water Quality Improvement Grant Program

The 2023 Legislature revised the Water Quality Improvement Grant Program[61] which provides funding to address wastewater (including septic to sewer), stormwater and agricultural sources of nutrients in waterbodies that are not attaining nutrient or nutrient-related standards, have an established total maximum daily load or are located within a basin management action plan area, a reasonable assurance plan area, an accepted alternative restoration plan area, or a rural area of opportunity under s. 288.0656, F.S.

Financial assistance is available to Florida's governmental entities for projects that have an established total maximum daily load or are located within a basin management action plan area, a reasonable assurance plan area, an accepted alternative restoration plan area, or a rural area of

[54] Section 380.093(5)(e), F.S. A financially disadvantaged small community is a municipality with a population of 10,000 or fewer, or a county with a population of 50,000 or fewer, where the per capita annual income is less than the state's per capita annual income. *Id.*
[55] Section 380.093(5)(h), F.S.
[56] Fla. Admin. Code Chapter 62S-8, *available at* https://floridadep.gov/sites/default/files/Final%20Rule%20Language_0.pdf.
[57] DEP and Florida Statewide Office of Resilience, *2022 Flood Resilience and Mitigation Efforts Across Florida*, 9, *available at* https://floridadep.gov/sites/default/files/2022%20Flood%20Resilience%20and%20Mitigation%20Efforts%20Report%20Only_0.pdf
[58] Section 380.093(6), F.S.
[59] DEP, *Presentation to the Florida Senate Committee on Environment and Natural Resources*, 18 (Feb. 23, 2023), *available at* https://www.flsenate.gov/Committees/Show/SSHR/MeetingPacket/5700/10150_MeetingPacket_5700_2.23.23.pdf.
[60] DEP and Florida Statewide Office of Resilience, *2022 Flood Resilience and Mitigation Efforts Across Florida*, 2, *available at* https://floridadep.gov/sites/default/files/2022%20Flood%20Resilience%20and%20Mitigation%20Efforts%20Report%20Only_0.pdf; Letter from Department of Economic Opportunity to DEP, 1-2 (Nov. 9, 2022), *available at* https://floridadep.gov/DEO_PoF_Letter2022.
[61] https://floridadep.gov/wra/wra/content/water-quality-improvement-grant-program (last visited Feb. 14, 2024).

opportunity under s. 288.0656, F.S., which will individually or collectively reduce excess nutrient pollution:

- To retrofit onsite sewage treatment and disposal systems (OSTDS) to upgrade such systems to enhanced nutrient-reducing onsite sewage treatment and disposal systems.
- To upgrade, expand or construct facilities to provide advanced wastewater treatment, as defined in s. 403.086(4), F.S.
- To connect OSTDS to central sewer facilities.
- To address stormwater and agricultural sources of nutrients in waterbodies that are not attaining nutrient or nutrient-related standards.
- To repair, upgrade, expand or construct domestic wastewater treatment facilities that result in improvements to surface water or groundwater quality, including domestic wastewater reuse and collection systems.
- Priority will be given to projects that:
- Have the maximum estimated reduction in nutrient load per project.
- Demonstrate project readiness.
- Are cost-effective.
- Have a cost-share identified by the applicant, except for rural areas of opportunity.
- Have previous state commitment and involvement in the project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project.

Are in a location where reductions are needed most to attain the water quality standard of a waterbody not attaining nutrient or nutrient-related standards

III. Effect of Proposed Changes:

Section 1 creates s. 380.095, F.S., to provide dedicated funding for conservation lands and clean water infrastructure. The bill provides that the Legislature recognizes that:

- The conservation and preservation of the land and water resources of the state are essential to maintaining the quality of life enjoyed by Floridians and to sustaining and growing a thriving state economy, including legacy industries such as tourism, agriculture, and fishing.
- Historic investments in land conservation have fostered and will continue to foster the preservation of Florida's heritage, allow for the strategic expansion and interconnectivity of the Florida wildlife corridor (wildlife corridor), and promote the protection of crucial habitat necessary for the survival, protection, and recovery of threatened and endangered native species, including the Florida panther.
- The state needs to be a good steward of the land, which necessitates the need for commitment to provide funding at levels sufficient to ensure the proper management of such lands. These investments provide opportunities for expanded public access to state lands, including state parks, the Florida Greenways and Trails System, and game lands, among others, for recreation; and promotes opportunities to protect such lands from wildfire damage and the infiltration of dangerous nonnative plant and animal species, among other benefits.
- The state is particularly vulnerable to adverse impacts from increases in the frequency and duration of rainfall events and sea level rise. The consequences of such events not only endanger human lives and properties, but also threaten Florida's natural habitats and biodiversity. The Legislature further recognizes that enhancing the state's resiliency to storm events and sea level rise is essential to Florida's economic stability and growth.

- The need for additional revenue sources to address the gap in funding needs necessary to address water quality impacts, and that projections for significant population growth further exacerbate such need
- It is in the best interest of the residents of the State of Florida to dedicate revenues from the gaming compact between the Seminole Tribe of Florida and the State of Florida to acquire and manage conservation lands, and to make significant investments in resiliency efforts and clean water infrastructure.

The bill dedicates revenues from the 2021 gaming compact between the Seminole Tribe of Florida and the State of Florida to acquire and manage conservation lands and to identify and fund the prioritization of critical clean water infrastructure investments. Specifically the bill provides that, notwithstanding s. 285.710, F.S., the Department of Revenue, upon receipt, shall deposit 96 percent of the revenue share payments received under the compact into the Indian Gaming Revenue Trust Fund within the Department of Financial Services (DFS). The funds shall be distributed as follows:

- $100 million to support the wildlife corridor, including the acquisition of lands or conservation easements within the wildlife corridor. To be eligible for funding, the acquisition project must be included on a land acquisition priority list. Eligible state agencies may submit budget amendments on a first come-first serve basis with the release of funds contingent upon approval.
- $100 million for the management of uplands and the removal of invasive species, which is divided as follows:
  - $36 million to the Department of Environmental Protection (DEP), of which:
    - $32 million to the State Park Trust Fund for state park land management activities;
    - $4 million to the Internal Improvement Trust Fund for implementation of the Local Trail Management Grant Program;
  - $32 million to the Incidental Trust Fund within the Department of Agriculture and Consumer Services (DACS) for land management activities;
  - $32 million to the State Game Trust Fund within the Fish and Wildlife Conservation Commission (FWC) for land management activities;
  - Additionally, the bill provides that state agencies may not use more than 25 percent of their funds for land management for operation capital outlay or capital assets.
- $100 million to the Resilient Florida Trust Fund within the DEP for the Statewide Flooding and Sea Level Rise Resilience Plan; and
- The remainder to the Water Protection and Sustainability Program Trust Fund within the DEP for the Water Quality Improvement Grant Program.

Section 2 creates s. 260.0145, F.S., to, subject to appropriation, establish the Local Trail Management Grant Program within the DEP. The Local Trail Management Grant Program will provide grants to assist local governments with costs associated with the operation and maintenance of trails within the Florida Greenways and Trails System. The bill provides that a local government may receive multiple grant awards per application cycle.

The DEP is required to give priority to each of the following:

- A local government that provides cost share for the costs associated with the operation and maintenance of the trails, except for trails within fiscally constrained counties or rural areas of opportunity.
- Trails within the wildlife corridor.

A local government may only use grant funds for the operation and maintenance of trails, including, but not limited to, the purchase of equipment and capital assets; the funding of necessary repairs to ensure the safety of trail users; and other necessary maintenance, such as pressure washing, bush pruning, and clearing debris. A local government may not use grant funds for the planning, design, or construction of trails.

Beginning January 15, 2025, and each January 15 thereafter, the DEP is required to submit a report listing the grants awarded to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include all of the following information for each grant award:

- The grant recipient's name.
- A description of the individual components of the trail, a description of the maintenance activities funded.
- The total management cost for the trail components.
- The cost share, if any, provided by the recipient.

Section 3 amends s. 259.1055, F.S., to authorize the FWC to enter into voluntary agreements with private landowners for environmental services within the wildlife corridor.

The agreements must require that the landowner protect and restore water resources; improve management of wildlife habitat, including long-term conservation of forest and grassland soils and native plants; manage the land in a manner that keeps the desired ecosystem healthy for protected species, such as the gopher tortoise and the Florida panther; or provide other incentives to landowners to continue and improve land uses that are both economically sustainable and beneficial to the environment of Florida.

The FWC shall ensure that any agreement for environmental services entered into requires the landowner to manage the land in a manner that improves or enhances the land beyond what is required under any other agreement or contract the landowner may have with the state.

The bill provides that, subject to appropriation, the FWC may use land management funds for this purpose.

Section 4 provides that the Land Management Uniform Accounting Council (LMUAC) shall recommend the most efficient and effective use of the funds available to state agencies for land management activities created with this bill. The recommendations must be based on a review of the resources of each land management agency to determine current expenditures, including personnel costs, spent specifically on upland management activities and invasive species removal. The recommendations must include a calculation methodology to distribute the funds to state agencies specified in s. 380.095(2)(b), F.S.

The LMUAC shall adopt its initial recommendation and submit it to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 3, 2027. Thereafter, the LMUAC shall update its recommendation in the biennial report.

Section 5 amends s. 403.0673, F.S., to provide that the DEP prioritize projects in the Water Quality Improvement Program that were determined eligible in a previous application cycle and were able to demonstrate project readiness but were not awarded a grant. The bill also requires the DEP to include these applicants in the annual report submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives each January 15. The bill further requires that the report include the progress made in the implementation of multi-year projects, including funds spent, remaining costs, and remaining timeline for full implementation.

Section 6 provides that contingent upon sufficient funds being distributed to the Indian Gaming Revenue Trust Fund for the 2024-2025 fiscal year, the sum of $2 million in recurring funds from the General Revenue Fund is appropriated to the University of Florida to continually update the wildlife corridor plan and the Florida Ecological Greenways Network plan.

Section 7 provides that contingent on the funds being distributed to the DEP pursuant to s. 380.095(2)(d), F.S., and for the 2024-2025 fiscal year, the sum of $5 million in nonrecurring funds from the Water Protection and Sustainability Trust Fund within the DEP is appropriated to the DEP to coordinate with the Water School at Florida Gulf Coast University (Water School) to conduct a study to identify and analyze potential regional projects that meet the eligibility requirements of the Water Quality Improvement Grant Program. At a minimum, the study must include the collection and consolidation of data regarding water quality to identify potential regional projects, including stormwater, hydrologic improvements, and innovative technologies, which reduce nutrient loading to water bodies identified in s. 403.0673(1), F.S. The DEP shall submit the report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 3, 2025.

Section 8 provides that contingent upon funds being distributed to the Indian Gaming Revenue Trust Fund within the DFS pursuant to s. 380.095, F.S., and for the 2024-2025 fiscal year, the sum of $100 million in nonrecurring funds from trust funds is appropriated to Administered Funds for land acquisition pursuant to s. 380.095(2)(a), F.S.

Section 9 provides that contingent upon funds being distributed to the DEP pursuant to s. 380.095(2)(b)1., F.S., and for the 2024-2025 fiscal year, the sum of $4 million in nonrecurring funds from the Internal Improvement Trust Fund within the DEP is appropriated for the purpose of implementing the Local Trail Management Grant Program created pursuant to s. 260.0145, F.S.

Section 10 provides that contingent upon funds being distributed to the DEP pursuant to s. 380.095(2)(b)1., F.S., and for the 2024-2025 fiscal year, the sum of $32 million in nonrecurring funds from the State Park Trust Fund within the DEP is appropriated for land management activities as specified in s. 380.095(2)(b)1.a., F.S.

Section 11 provides that contingent upon funds being distributed to the DACS pursuant to s. 380.095(2)(b)2., F.S., and for the 2024-2025 fiscal year, the sum of $32 million in

nonrecurring funds from the Incidental Trust Fund within the DACS is appropriated for land management activities as specified in s. 380.095(2)(b)2., F.S.

Section 12 provides that contingent upon funds being distributed to the FWC pursuant to s. 380.095(2)(b)3., F.S., and for the 2024-2025 fiscal year, the sum of $32 million in nonrecurring funds from the State Game Trust Fund within the FWC is appropriated for control of invasive species and upland land management activities pursuant to s. 380.095(2)(b)3., F.S.

Section 13 provides that contingent upon funds being distributed to the DEP pursuant to s. 380.095(2)(c), F.S., and for the 2024-2025 fiscal year, the sum of $100 million in nonrecurring funds from the Resilient Florida Trust Fund within the DEP is appropriated for the Statewide Flooding and Sea Level Rise Resilience Plan pursuant to s. 380.093, F.S.

Section 14 provides that contingent upon funds being distributed to the DEP pursuant to s. 380.095(2)(d), F.S., and for the 2024-2025 fiscal year, the sum of $79 million in nonrecurring funds from the Water Protection and Sustainability Program Trust Fund within the DEP is appropriated for the Water Quality Improvement Grant Program pursuant to s. 403.0673, F.S.

Section 15 provide that for the 2024-2025 fiscal year, $150 million in nonrecurring funds from the General Revenue Fund is appropriated to the South Florida Water Management District (SFWMD) for operations and maintenance responsibilities under the purview of the district. The funds must be placed in reserve.

From the funds the SFWMD shall enter into a contract with the Water School to conduct a study of the health and ecosystem of Lake Okeechobee. The study must take into account the health of plant, fish, and wildlife to be used for future planning of invasive plant control, replanting of native vegetation, and fish and game management. The study must be submitted by January 1, 2025, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives. The DEP is authorized to submit budget amendments to request release of funds contingent upon the submission of a spend plan and negotiated draft contract between the SFWMD and The Water School.

Section 16 provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 96 percent of compact revenues distributed to the various trust funds in the bill, will result in $384 million less distributed to the General Revenue Fund based upon an estimated $400 million in compact payments, which is the minimum amount set in the compact.

The bill provides the following appropriations from the trust funds to which the compact revenues are distributed, contingent upon such distributions being made:

- $100 million to support the wildlife corridor. Eligible state agencies may submit budget amendments on a first come-first serve basis with the release of funds contingent upon approval.
- $100 million for the management of uplands and the removal of invasive species, which is divided as follows:
  - $36 million to the Department of Environmental Protection, of which:
    - $32 million for state park land management activities;
    - $4 million for implementation of the Local Trail Management Grant Program;
  - $32 million to the Department of Agriculture and Consumer Services for land management activities;
  - $32 million to the Fish and Wildlife Conservation Commission for land management activities;
- $100 million to the Department of Environmental Protection for the Resilient Grant Program;
- The remainder (which is $79 million if the minimum of $400 million in payments is met) to the Department of Environmental Protection for the Water Quality Improvement Grant Program.

Additionally, the bill:

- Provides $2 million, from the General Revenue Fund, to the University of Florida to continually update the Florida Wildlife Corridor plan and the Florida Ecological Greenways Network plan.

- Provides $5 million to the DEP to coordinate with the Water School at Florida Gulf Coast University to conduct a study to identify and analyze potential regional projects that meet the eligibility requirements of the Water Quality Improvement Grant Program.

Provides $150 million nonrecurring general revenue to the South Florida Water Management District for operations and maintenance and to conduct a study of the health of Lake Okeechobee.

VI. Technical Deficiencies:

Currently the Indian Gaming Revenue Trust Fund does not exist within the Department of Financial Services and would need to be created.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 259.1055 and 403.0673 of the Florida Statutes.

This bill creates sections 260.0145 and 380.095 of the Florida Statutes.

This bill creates undesignated sections of law.

IX. Additional Information:

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

CS by Fiscal Policy on February 15, 2024:
The committee substitute:

- Changes the distribution of gaming compact funds as follows:
  - $100 million to support the wildlife corridor. Eligible state agencies may submit budget amendments on a first come-first serve basis with the release of funds contingent upon approval.
  - $100 million for the management of uplands and the removal of invasive species, which is divided as follows:
    - $36 million to the Department of Environmental Protection, of which:
      - $32 million for state park land management activities;
      - $4 million for implementation of the Local Trail Management Grant Program;

        - $32 million to the Department of Agriculture and Consumer Services for land management activities;
        - $32 million to the Fish and Wildlife Conservation Commission for land management activities;
    - $100 million to the Department of Environmental Protection for the Resilient Grant Program;
    - The remainder ($79 million) to the Department of Environmental Protection for the Water Quality Improvement Grant Program.
- Removes provisions regarding the creation of the Water Quality Work Program.
- Provides management techniques for the Florida Wildlife Corridor.
- Requires the Land Management Uniform Accounting Council to recommend the most efficient use of land management funds provided to state agencies and submit its recommendation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 3, 2027. Thereafter the LMUAC shall update its recommendation in the biennial report.

Provides $150 million to the South Florida Water Management District for operations and maintenance and to conduct a study of the health of Lake Okeechobee.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 380.095, Florida Statutes, is created to read:

380.095 Dedicated funding for conservation lands, resiliency, and clean water infrastructure.—

(1) LEGISLATIVE INTENT.—The Legislature recognizes that the conservation and preservation of the land and water resources of

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this state are essential to maintaining the quality of life enjoyed by Floridians and to sustaining and growing a thriving state economy, including legacy industries such as tourism, agriculture, and fishing.

(a) The Legislature recognizes that historic investments in land conservation have fostered and will continue to foster the preservation of Florida's heritage, allow for the strategic expansion and interconnectivity of the Florida wildlife corridor, and promote the protection of crucial habitat necessary for the survival, protection, and recovery of threatened and endangered native species, including the Florida panther.

(b) The Legislature further recognizes that as the state acquires land, the state needs to be a good steward of the land, which necessitates the need for a commitment to provide funding at levels sufficient to ensure the proper management of such lands. These investments provide opportunities for expanded public access to state lands, including state parks, the Florida Greenways and Trails System, and game lands, among others, for recreation; and promote opportunities to protect such lands from wildfire damage and the infiltration of dangerous nonnative plant and animal species, among other benefits.

(c) The Legislature finds that the state is particularly vulnerable to adverse impacts from increases in the frequency and duration of rainfall events and sea level rise. The consequences of such events not only endanger human lives and properties, but also threaten Florida's natural habitats and biodiversity. The Legislature further recognizes that enhancing the state's resiliency to storm events and sea level rise is

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essential to Florida's economic stability and growth.

(d) Furthermore, the Legislature recognizes the need for additional revenue sources to address the gap in funding needs necessary to address water quality impacts, and that the projections for significant population growth further exacerbate such need.

(e) Therefore, the Legislature finds that it is in the best interest of the residents of the State of Florida to dedicate revenues from the gaming compact between the Seminole Tribe of Florida and the State of Florida to acquire and manage conservation lands, and to make significant investments in resiliency efforts and clean water infrastructure.

(2) DISTRIBUTION.—Notwithstanding s. 285.710, the Department of Revenue shall, upon receipt, deposit 96 percent of any revenue share payment received under the compact as defined in s. 285.710 into the Indian Gaming Revenue Trust Fund within the Department of Financial Services. The funds deposited into the trust fund shall be distributed as follows:

(a) The sum of $100 million to support the wildlife corridor as defined in s. 259.1055, including the acquisition of lands or conservation easements within the wildlife corridor. To be eligible for funding, the acquisition project must be included on a land acquisition priority list developed pursuant to s. 259.035 or s. 570.71. The funds must be appropriated in Administered Funds each fiscal year. Eligible state agencies may, on a first-come, first-served basis, submit a budget amendment to request release of funds pursuant to chapter 216. Release is contingent upon approval, if required.

(b) The sum of $100 million for the management of uplands

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and the removal of invasive species, which must be divided as follows:

1. Thirty-six million to the Department of Environmental Protection, of which:

a. Thirty-two million to the State Park Trust Fund within the department for land management activities within the state park system; and

b. Four million to the Internal Improvement Trust Fund within the department for the purpose of implementing the Local Trail Management Grant Program created pursuant to s. 260.0145.

2. Thirty-two million to the Incidental Trust Fund within the Department of Agriculture and Consumer Services for land management activities.

3. Thirty-two million to the State Game Trust Fund within the Fish and Wildlife Conservation Commission for land management activities, including management activities for gopher tortoises and Florida panthers.

For sub-subparagraph 1.a. and subparagraphs 2. and 3., a land manager may not use more than 25 percent of the distribution for operation capital outlay or capital assets.

(c) The sum of $100 million to the Resilient Florida Trust Fund within the Department of Environmental Protection for the Statewide Flooding and Sea Level Rise Resilience Plan to be used in accordance with s. 380.093.

(d) The remainder to the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection for the Water Quality Improvement Grant Program, to be used in accordance with s. 403.0673.

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Section 2. Section 260.0145, Florida Statutes, is created to read:

260.0145 Local Trail Management Grant Program.—

(1) The Local Trail Management Grant Program is created within the department to assist local governments with costs associated with the operation and maintenance of trails within the Florida Greenways and Trails System. Funding for the program is subject to appropriation.

(2) A local government may receive multiple grant awards per application cycle.

(3) The department shall give priority to each of the following:

(a) A local government that provides cost share for the costs associated with the operation and maintenance of the trails, except for trails within fiscally constrained counties or rural areas of opportunity.

(b) Trails within the Florida wildlife corridor as defined in s. 259.1055.

(4) A local government may only use grant funds for the operation and maintenance of trails, including, but not limited to, the purchase of equipment and capital assets; the funding of necessary repairs to ensure the safety of trail users; and other necessary maintenance, such as pressure washing, bush pruning, and clearing debris. A local government may not use grant funds for the planning, design, or construction of trails.

(5) Beginning January 15, 2025, and each January 15 thereafter, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 286.001 listing

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the grants awarded pursuant to this section. The report must include the following information for each grant award: the grant recipient's name, a description of the individual components of the trail, a description of the maintenance activities funded, the total management cost for the trail components, and the cost share, if any, provided by the recipient.

Section 3. Present subsection (6) of section 259.1055, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

259.1055 Florida wildlife corridor.—

(6) MANAGEMENT TECHNIQUES.—The Fish and Wildlife Conservation Commission is authorized to enter into voluntary agreements with private landowners for environmental services within the wildlife corridor.

(a) The agreements must require that the landowner protect and restore water resources; improve management of wildlife habitat, including the long-term conservation of forest and grassland soils and native plants; manage the land in a manner that keeps the desired ecosystem healthy for protected species, such as the gopher tortoise and the Florida panther; or provide other incentives to landowners to continue and improve land uses that are both economically sustainable and beneficial to the environment of this state.

(b) The commission shall ensure that any agreement for environmental services entered into requires the landowner to manage the land in a manner that improves or enhances the land beyond what is required under any other agreement or contract the landowner may have with the state.

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(c) Subject to appropriation, the commission may use land management funds received pursuant to s. 380.095 for this purpose.

Section 4. (1) The Land Management Uniform Accounting Council (LMUAC) shall recommend the most efficient and effective use of the funds available to state agencies for land management activities pursuant to s. 380.095, Florida Statutes. The recommendations must be based on a review of the resources of each land management agency to determine current expenditures, including personnel costs, spent specifically on upland management activities and invasive species removal. The recommendations must include a calculation methodology to distribute the funds to the state agencies specified in s. 380.095(2)(b), Florida Statutes.

(2) The LMUAC shall adopt its initial recommendation and submit it to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 3, 2027. Thereafter, the LMUAC shall update its recommendation in the biennial report developed pursuant to s. 259.037, Florida Statutes.

Section 5. Subsections (3) and (7) of section 403.0673, Florida Statutes, are amended to read:

403.0673 Water quality improvement grant program.—A grant program is established within the Department of Environmental Protection to address wastewater, stormwater, and agricultural sources of nutrient loading to surface water or groundwater.

(3) The department shall consider and prioritize those projects that:

(a) Have the maximum estimated reduction in nutrient load

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per project;

(b) Demonstrate project readiness;

(c) Are cost-effective;

(d) Have a cost share identified by the applicant, except for rural areas of opportunity;

(e) Have multi-year project implementation schedules with previous state commitment and involvement in the project, considering previously funded phases, the total amount of previous state funding, and previous partial appropriations for the proposed project; ~~or~~

(f) Are in a location where reductions are needed most to attain the water quality standards of a waterbody not attaining nutrient or nutrient-related standards; or

(g) Were determined eligible in a previous application cycle and were able to demonstrate project readiness but were not awarded a grant.

Any project that does not result in reducing nutrient loading to a waterbody identified in subsection (1) is not eligible for funding under this section.

(7) Beginning January 15, 2024, and each January 15 thereafter, the department shall submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include a list of those projects receiving funding and those projects not receiving funding which were determined eligible by the department and were able to demonstrate project readiness. The report must include ~~and~~ the following information for each project:

(a) A description of the project;

(b) The cost of the project;

(c) The estimated nutrient load reduction of the project;

(d) The location of the project;

(e) The waterbody or waterbodies where the project will reduce nutrients; ~~and~~

(f) The total cost share being provided for the project; and

(g) The progress made in the implementation of multi-year projects, including the funds spent, remaining costs, and remaining timeline for full implementation.

Section 6. (1) Contingent upon sufficient funds being distributed to the Indian Gaming Revenue Trust Fund pursuant to s. 380.095, Florida Statutes, and for the 2024-2025 fiscal year, the sum of $2 million in recurring funds from the General Revenue Fund is appropriated to the University of Florida to continually update the Florida Wildlife Corridor plan and the Florida Ecological Greenways Network plan.

Section 7. Contingent upon sufficient funds being distributed to the Department of Environmental Protection pursuant to s. 380.095(2)(c), Florida Statutes, and for the 2024-2025 fiscal year, the sum of $5 million in nonrecurring funds from the Water Protection and Sustainability Trust Fund within the Department of Environmental Protection is appropriated to the department to coordinate with the Water School at Florida Gulf Coast University to conduct a study to identify and analyze potential regional projects that meet the eligibility criteria set forth in s. 403.0673, Florida Statutes. At a minimum, the study must include the collection and

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consolidation of data regarding water quality to identify potential regional projects, including stormwater, hydrologic improvements, and innovative technologies, which reduce nutrient loading to water bodies identified in s. 403.0673(1), Florida Statutes. The department shall submit the report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 3, 2025.

Section 8. Contingent upon sufficient funds being distributed to the Indian Gaming Revenue Trust Fund within the Department of Financial Services pursuant to s. 380.095, Florida Statutes, and for the 2024-2025 fiscal year, the sum of $100 million in nonrecurring funds from trust funds is appropriated to Administered Funds for land acquisition pursuant to s. 380.095(2)(a), Florida Statutes.

Section 9. Contingent upon sufficient funds being distributed to the Department of Environmental Protection pursuant to s. 380.095(2)(b)1., Florida Statutes, and for the 2024-2025 fiscal year, the sum of $4 million in nonrecurring funds from the Internal Improvement Trust Fund within the Department of Environmental Protection is appropriated for the purpose of implementing the Local Trail Management Grant Program created pursuant to s. 260.0145, Florida Statutes.

Section 10. Contingent upon sufficient funds being distributed to the Department of Environmental Protection pursuant to s. 380.095(2)(b)1., Florida Statutes, and for the 2024-2025 fiscal year, the sum of $32 million in nonrecurring funds from the State Park Trust Fund within the Department of Environmental Protection is appropriated for land management


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activities as specified in s. 380.095(2)(b)2., Florida Statutes.

Section 11. Contingent upon sufficient funds being distributed to the Department of Agriculture and Consumer Services pursuant to s. 380.095(2)(b)2., Florida Statutes, and for the 2024-2025 fiscal year, the sum of $32 million in nonrecurring funds from the Incidental Trust Fund within the Department of Agriculture and Consumer Services is appropriated for land management activities as specified in s. 380.095(2)(b)3., Florida Statutes.

Section 12. Contingent upon sufficient funds being distributed to the Fish and Wildlife Conservation Commission pursuant to s. 380.095(2)(b)3., Florida Statutes, and for the 2024-2025 fiscal year, the sum of $32 million in nonrecurring funds from the State Game Trust Fund within the Fish and Wildlife Conservation Commission is appropriated for control of invasive species and upland land management activities pursuant to s. 380.095(2)(b)3., Florida Statutes, or s. 259.1055, Florida Statutes.

Section 13. Contingent upon sufficient funds being distributed to the Resilient Florida Trust Fund pursuant to s. 380.095(2)(c), Florida Statutes, and for the 2024-2025 fiscal year, the sum of $100 million in nonrecurring funds from the Resilient Florida Trust Fund within the Department of Environmental Protection is appropriated for the Resilient Florida Grant Program pursuant to s. 380.093, Florida Statutes.

Section 14. Contingent upon sufficient funds being distributed to the Water Protection and Sustainability Program Trust Fund pursuant to s. 380.095(2)(d), Florida Statutes, and for the 2024-2025 fiscal year, the sum of $79 million in

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nonrecurring funds from the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection is appropriated for the Water Quality Improvement Grant Program pursuant to s. 403.0673, Florida Statutes.

Section 15. For the 2024-2025 fiscal year, the sum of $150 million in nonrecurring funds from the General Revenue Fund is appropriated in the Aid to Local Governments – Grants and Aids - South Florida Water Management District - Operations appropriation category to the South Florida Water Management District for operations and maintenance responsibilities under the purview of the district. The funds must be placed in reserve. From the funds, the district shall enter into a contract with the Water School at Florida Gulf Coast University to conduct a study of the health and ecosystem of Lake Okeechobee. The study must take into account the health of plant, fish, and wildlife to be used for future planning of invasive plant control, replanting of native vegetation, and fish and game management. The study must be submitted by January 1, 2025, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Department of Environmental Protection is authorized to submit budget amendments to request release of funds pursuant to chapter 216, Florida Statutes. Release is contingent upon the submission of a spend plan and negotiated draft contract between the South Florida Water Management District and the Florida Gulf Coast University Water School.

Section 16. This act shall take effect upon becoming a law.

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

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And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to funding for environmental resource management; creating s. 380.095, F.S.; providing legislative findings and intent; requiring the Department of Revenue to deposit into the Indian Gaming Revenue Trust Fund within the Department of Financial Services a specified percentage of the revenue share payments received under the gaming compact between the Seminole Tribe of Florida and the State of Florida; providing requirements for the distribution of such funds; creating s. 260.0145, F.S.; creating the Local Trail Management Grant Program within the Department of Environmental Protection for a specified purpose; providing for the administration and prioritization of awards; specifying the authorized and prohibited uses of grant funds; requiring the department to submit an annual report to the Governor and the Legislature by a specified date; providing requirements for the report; amending s. 259.1055, F.S.; authorizing the Fish and Wildlife Conservation Commission to enter into voluntary agreements with private landowners for environmental services within the wildlife corridor; providing requirements for such agreements; authorizing the use of land management funds; requiring the Land Management Uniform Accounting

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Council to recommend the efficient and effective use of certain funds available to state agencies for land management activities; providing requirements for such recommendations; requiring the council to adopt and submit its initial recommendation to the Executive Office of the Governor and the Legislature by a specified date; requiring biennial updates; amending s. 403.0673, F.S.; revising the projects the department is required to prioritize within the water quality improvement grant program; revising the components required for the grant program's annual report; providing appropriations; requiring the department to coordinate with the Water School at Florida Gulf Coast University for specified purposes; requiring the Water School to conduct a specified study; providing requirements for the study; requiring the department to submit a report to the Executive Office of the Governor and the Legislature by a specified date; providing appropriations; requiring the South Florida Water Management District to enter into a contract with the Water School at Florida Gulf Coast University to conduct a study of the health and ecosystem of Lake Okeechobee; providing requirements for the study; requiring a report to the Executive Office of the Governor and the Legislature by a specified date; authorizing the Department of Environmental Protection to submit budget amendment for the release of specified funds; providing an effective date.

By Senator Hutson

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A bill to be entitled

An act relating to funding for environmental resource management; creating s. 260.0145, F.S.; creating, subject to appropriation, the Local Trail Management Grant Program within the Department of Environmental Protection for a specified purpose; providing for the administration and prioritization of awards; specifying the authorized and prohibited uses of grant funds; requiring the department to submit an annual report to the Governor and the Legislature by a specified date; providing requirements for the report; creating s. 380.095, F.S.; providing legislative findings and intent; requiring the Department of Revenue to distribute, on a monthly basis, a specified percentage of the revenue share payments received under the 2021 gaming compact; providing requirements for the distributions; creating s. 403.0676, F.S.; creating the Water Quality Work Program within the Department of Environmental Protection; providing the purpose of the program; creating a water quality project revolving loan program within the department for a specified purpose; authorizing the department to provide loans to local governments for certain water projects; providing requirements for and the terms of such loans; requiring the department to develop a 5-year work plan for the water quality project revolving loan program; providing for funding for the program; providing project eligibility requirements; requiring the department to contract with the Water School at

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Florida Gulf Coast University for specified purposes; requiring the Water School to provide certain recommendations; requiring the department to implement the loan program based upon the recommendations; requiring the department to create application procedures for the loan program; requiring the Water School, subject to appropriation, to conduct a study to identify and analyze certain impaired water bodies; providing requirements for the study; authorizing the Water School to work with the department and use specified data; amending s. 403.890, F.S.; revising the purposes for which the department must use certain revenues deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund; requiring certain funds to be kept in a separate account and be used only for specified purposes; providing requirements for such funds; providing appropriations to the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida and the Water School for specified purposes; requiring the IFAS and the Water School to submit reports to the Executive Office of the Governor and the Legislature by a specified date; providing an appropriation to the Water School for a specified study; providing appropriations; providing an effective date.

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

Section 1. Section 260.0145, Florida Statutes, is created to read:

260.0145 Local Trail Management Grant Program.—

(1) Subject to appropriation, the Local Trail Management Grant Program is created within the department to assist local governments with costs associated with the operation and maintenance of trails within the Florida Greenways and Trails System.

(2) A local government may receive multiple grant awards per application cycle.

(3) The department shall give priority to each of the following:

(a) A local government that provides cost share for the costs associated with the operation and maintenance of the trails, except for trails within fiscally constrained counties or rural areas of opportunity.

(b) Trails within the Florida wildlife corridor as defined in s. 259.1055.

(4) A local government may only use grant funds for the operation and maintenance of trails, including, but not limited to, the purchase of equipment and capital assets; the funding of necessary repairs to ensure the safety of trail users; and other necessary maintenance, such as pressure washing, bush pruning, and clearing debris. A local government may not use grant funds for the planning, design, or construction of trails.

(5) Beginning January 15, 2025, and each January 15 thereafter, the department shall submit a report listing the grants awarded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of

Representatives in accordance with s. 286.001. The report must include the following information for each grant award: the grant recipient's name, a description of the individual components of the trail, a description of the maintenance activities funded, the total management cost for the trail components, and the cost share, if any, provided by the recipient.

Section 2. Section 380.095, Florida Statutes, is created to read:

380.095 Dedicated funding for conservation lands and clean water infrastructure.—

(1) The Legislature recognizes that the conservation and preservation of the land and water resources of this state are essential to maintaining the quality of life enjoyed by Floridians and to sustaining and growing a thriving state economy, including legacy industries such as tourism and agriculture.

(a) The Legislature recognizes that historic investments in land conservation continue to foster the preservation of working farmland and ranchland, allow for the strategic expansion and interconnectivity of the Florida wildlife corridor, and promote the protection of endangered native species, including the Florida panther.

(b) The Legislature further recognizes that funding for the management of conservation lands ensures opportunities for expanded public access to state lands, including state parks, the Florida Greenways and Trails System, and game lands, among others, for recreation; and promotes opportunities to protect such lands from wildfire damage and the infiltration of

dangerous nonnative plant and animal species, among other benefits.

(c) Furthermore, the Legislature recognizes that projections for significant population growth necessitate an additional recurring revenue source for further funding and planning associated with the protection of this state's conservation lands and clean water infrastructure.

(d) Therefore, the Legislature intends to dedicate revenues from the 2021 gaming compact between the Seminole Tribe of Florida and the State of Florida to acquire and manage conservation lands and to identify and fund the prioritization of critical clean water infrastructure investments.

(2) Notwithstanding s. 285.710, on a monthly basis the Department of Revenue shall distribute 96 percent of the revenue share payments received under the compact as defined in s. 285.710. The funds shall be kept in a separate account within each trust fund and shall be distributed as follows:

(a) Thirty-two percent to the Incidental Trust Fund within the Department of Agriculture and Consumer Services for conservation easements pursuant to s. 570.71 and land acquisitions pursuant to s. 589.07. The Department of Agriculture and Consumer Services shall give priority to land within the Florida wildlife corridor as defined in s. 259.1055.

(b) Thirty-two percent to state land managers for the management of state-owned uplands and removal of invasive exotics, which must be divided as follows:

1. Nine percent to the Internal Improvement Trust Fund within the Department of Environmental Protection for the purpose of implementing the Local Trail Management Grant Program

created pursuant to s. 260.0145.

2. Nine percent to the State Park Trust Fund within the Department of Environmental Protection for land management activities within the state park system.

3. Twenty-seven percent to the Incidental Trust Fund within the Department of Agriculture and Consumer Services for land management activities.

4. Fifty-five percent to the State Game Trust Fund within the Fish and Wildlife Conservation Commission for land management activities.

For subparagraphs 2., 3., and 4., a land manager may not use more than 10 percent of the distribution for operation capital outlay or capital assets.

(c) Thirty-two percent to the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection to implement the Water Quality Work Program created pursuant to s. 403.0676.

Section 3. Section 403.0676, Florida Statutes, is created to read:

403.0676 Water Quality Work Program.—

(1) WATER QUALITY WORK PROGRAM.—In light of the state's commitment to protect this state's water resources, and in recognition of the vast number of projects and amount of funding necessary to repair and protect this state's water bodies, the Water Quality Work Program is created within the department. The purpose of the program is to provide a comprehensive statewide assessment of critical water quality projects and to include predictable financing options for local governments to implement

such projects on a set schedule based upon a data-driven methodology for prioritization.

(2) WATER QUALITY PROJECT REVOLVING LOAN PROGRAM.—In order to assist local governments with financing water quality projects, a water project revolving loan program is created within the department as part of the Water Quality Work Program.

(a) The department may, subject to appropriation and in accordance with the 5-year work plan required by subsection (3), provide loans to local governments for projects to construct, upgrade, or expand facilities to provide advanced waste treatment or connect onsite sewage treatment and disposal systems to central sewer facilities.

(b) The loans must be interest-free and provided through a promissory note or other form of written agreement evidencing an obligation to repay the borrowed funds to the department.

(c) The term of the loan is 240 months, commencing 12 months after the execution of the loan agreement.

(d) The loans become due and payable in accordance with the terms of the agreement. However, loan payments may be made at any time before the loan is due without penalty, and early repayment is encouraged as other funding sources or revenues become available.

(3) FIVE-YEAR WORK PLAN.—In order to assist local governments in planning, the department shall develop a 5-year work plan for the water quality project revolving loan program. The planned funding for the work plan must include funds distributed pursuant to s. 380.095 and anticipate an additional annual 5 percent increase from loan repayments. The first year of the work plan must commence July 1, 2025, and include the

unexpended balance of funds from the 2024-2025 fiscal year.

(a) To be eligible for the work plan a project must:

1. Connect onsite sewage treatment and disposal systems to existing central sewer facilities; or

2. Construct, upgrade, or expand domestic wastewater treatment facilities.

(b) The department shall contract with the Water School at Florida Gulf Coast University to develop parameters for project criteria and for setting priorities for the work plan.

(c) The Water School shall recommend whether the scope of eligible projects should be expanded and shall provide prioritization criteria based upon an analysis of this state's water resources. The prioritization criteria must:

1. Provide a data-driven framework for scoring projects, with consideration given for economic as well as environmental factors, including a consideration of the return on investment; and

2. Promote efficiency through cross-jurisdictional planning, such as planning for the construction of wastewater transmission infrastructure concurrently with transportation facility projects.

(d) The Water School may work with the department and use readily available data, such as data gathered as part of:

1. The plans developed pursuant to s. 403.064(17);

2. The basin management plans and reports developed under ss. 403.067 and 403.0671;

3. The assessments and survey data compiled by the Office of Economic and Demographic Research pursuant to s. 403.928; and

4. The plans developed pursuant to s. 403.086(7).

(e) The department shall, based upon the recommendations provided by the Water School, implement the loan program. The department shall create a loan application and set an application deadline and may request any other information necessary to review and evaluate an application. Once the application deadline has passed, the department shall, based upon the qualified applicants, select the list of projects to include within the 5-year work plan in accordance with the Water School's recommendations for prioritization.

(4) WATER QUALITY STUDY.—Subject to appropriation, the Water School shall conduct a study to identify and analyze impaired water bodies, including upstream sources, and determine the root causes of such impairment.

(a) At a minimum, the study must include an analysis of the following river basins: Apalachicola, Caloosahatchee, Indian, Peace, St. Johns, St. Lucie, and Suwannee.

(b) The Water School may work with the department and shall have access to other state readily available data.

Section 4. Present subsection (3) of section 403.890, Florida Statutes, is redesignated as subsection (4), paragraph (d) is added to subsection (1) of that section, and a new subsection (3) is added to that section, to read:

403.890 Water Protection and Sustainability Program.—

(1) Revenues deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund shall be distributed by the Department of Environmental Protection for the following purposes:

(d) The Water Quality Work Program as provided in s. 403.0676.

(3) Funds deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund for the purposes of the water quality revolving loan program must be kept in a separate account and may only be used for such purpose and, notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year for the water quality revolving loan program must remain in the trust fund at the end of the year and must be available for carrying out the purposes of the program. All moneys in the account not needed on an immediate basis for loans must be invested pursuant to s. 215.49. The principal and interest of all loans repaid and investment earnings must be deposited into the account.

Section 5. (1) Contingent upon funds being distributed to the Fish and Wildlife Conservation Commission pursuant to s. 380.095, Florida Statutes, and for the 2024-2025 fiscal year, the sum of $5 million in nonrecurring funds from the State Game Trust Fund within the Fish and Wildlife Conservation Commission is appropriated to the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida to perform a study of state agencies' upland land management activities.

(2) The study must include all of the following:

(a) Recommendations for best management practices for inclusion in the land management plans with regard to the separate missions of the land management agencies and based upon the purposes for which the land is managed.

(b) A review of land management plans to determine if the 10-year frequency of plan updates is adequate for best management practices.

(c) A review of the resources of each land management

agency to determine current expenditures, including personnel costs, spent on upland management activities.

(d) A recommendation on the most efficient and effective use of the distribution of funds to the state agencies specified in s. 380.095(2)(b), Florida Statutes.

(3) IFAS shall submit a report of the results of the study to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 3, 2025.

Section 6. Contingent on the funds being distributed to the Department of Environmental Protection pursuant to s. 380.095(2)(c), Florida Statutes, and for the 2024-2025 fiscal year:

(1) The sum of $5 million in nonrecurring funds from the Water Protection and Sustainability Trust Fund within the Department of Environmental Protection is appropriated to the Water School at Florida Gulf Coast University to develop a report, including recommendations to implement the 5-year work plan for the water project revolving loan program pursuant to s. 403.0676(3), Florida Statutes. The recommendations must include a framework for the work plan and any implementing statutory language needed to implement the work plan. The Water School shall submit the report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 3, 2025.

(2) The sum of $25 million in nonrecurring funds from the Water Protection and Sustainability Trust Fund within the Department of Environmental Protection is appropriated to the Water School at Florida Gulf Coast University to perform the

study required by s. 403.0676(4), Florida Statutes.

Section 7. Contingent upon funds being distributed to the Department of Environmental Protection pursuant to s. 380.095(2)(b)1., Florida Statutes, and for the 2024-2025 fiscal year, the sum of $11,520,000 in nonrecurring funds from the Internal Improvement Trust Fund within the Department of Environmental Protection is appropriated for the purpose of implementing the Local Trail Management Grant Program created pursuant to s. 260.0145, Florida Statutes.

Section 8. Contingent upon funds being distributed to the Department of Environmental Protection pursuant to s. 380.095(2)(b)2., Florida Statutes, and for the 2024-2025 fiscal year, the sum of $11,520,000 in nonrecurring funds from the State Park Trust Fund within the Department of Environmental Protection is appropriated for land management activities as specified in s. 380.095(2)(b)2., Florida Statutes.

Section 9. Contingent upon funds being distributed to the Department of Agriculture and Consumer Services pursuant to s. 380.095(2)(b)3., Florida Statutes, and for the 2024-2025 fiscal year, the sum of $34,560,000 in nonrecurring funds from the Incidental Trust Fund within the Department of Agriculture and Consumer Services is appropriated for land management activities as specified in s. 380.095(2)(b)3., Florida Statutes.

Section 10. Contingent upon funds being distributed to the Fish and Wildlife Conservation Commission pursuant to s. 380.095(2)(b)4., Florida Statutes, and for the 2024-2025 fiscal year, the sum of $65,400,000 in nonrecurring funds from the State Game Trust Fund within the Fish and Wildlife Conservation Commission is appropriated for control of invasive exotics and

upland land management activities pursuant to s. 380.095(2)(b)4., Florida Statutes.

Section 11. Contingent upon funds being distributed to the Department of Agriculture and Consumer Services pursuant to s. 380.095(2)(a), Florida Statutes, and for the 2024-2025 fiscal year, the sum of $128 million in recurring funds from the Incidental Trust Fund within the Department of Agriculture and Consumer Services is appropriated in fixed capital outlay for conservation easements pursuant to s. 570.71, Florida Statutes, and land acquisitions pursuant to s. 589.07, Florida Statutes.

Section 12. This act shall take effect upon becoming a law.

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

1638
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name ELIZABETH ALVI (AUDUBON FLORIDA) Phone 850-222-1098

Address 308 N. MONROE Email Beth.Alvi@AUDUBON.ORG

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: AUDUBON FLORIDA

☐ 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. 2020-2022JointRules.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 the Senator or Senate Professional Staff conducting the meeting)

2/15/24
Meeting Date

1638
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

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Tallahassee FL 32302
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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/24
Meeting Date

Fiscal Policy
Committee

1638
Bill Number or Topic

Amendment Barcode (if applicable)

Name JEFF SCALA

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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 Counties

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/SB 1716
INTRODUCER:	Banking and Insurance Committee and Senator Boyd
SUBJECT:	Citizens Property Insurance Corporation
DATE:	February 13, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Fav/CS**
2.	Knudson	Yeatman	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1716 revises Citizens Property Insurance Corporation's (Citizens) eligibility criteria for personal lines residential risks that are not primary residences, and authorizes surplus lines insurers meeting certain criteria to make take-out offers of coverage that render such policies ineligible for Citizens. A "primary residence" is defined as a dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

With regard to eligibility of risks that are not primary residences, the bill makes a non-primary residence ineligible for Citizens coverage upon receiving an offer of coverage at any rate, and does not require that the offer provide coverage that is comparable to that provided by a Citizens policy.

The bill authorizes surplus lines insurers to submit take-out offers to Citizens risks that are not primary residences if the surplus lines insurer has an "A" financial strength rating from A.M. Best and the surplus lines insurer's personal lines residential risk program is managed by a Florida resident surplus lines broker. The surplus lines take-out offer plan must first be approved by the Office of Insurance Regulation (OIR).

The bill makes statutory changes to facilitate the transition of Citizens Property Insurance Corporation from an organizational structure where Citizens policies are held in three different accounts (a personal lines account, commercial account, and a coastal account) to a structure where all Citizens policies are held in a single account (the Citizens account).

The bill also:

- Provides that only licensed agents holding appointments by at least three authorized insurers that are actually writing or renewing property insurance in this state may be appointed by Citizens as its licensed agents;
- Provides that the executive director of Citizens is the Agency head of Citizens for purposes of procurement bid protests under s. 287.057, F.S., and authorizes the executive director to appoint a designee to act on his or her behalf for all purposes under the that statute;
- Deletes language prohibiting the application of the Division of Administrative Hearing's bond requirements related to Citizens bid protest hearings;
- Allows licensed surplus lines agents access to confidential and exempt claims files for the purpose of considering whether to write a risk currently insured by Citizens;
- Authorizes Citizens to share its claims data with the National Insurance Crime Bureau (NICB), so long as the NICB maintains the confidentiality of certain documents;
- Authorizes Citizens to acquire patents, trademarks, and copyrights on work products and take action to enforce its rights therein;
- Revises s. 627.3518, F.S., the Citizens clearinghouse statute, to conform to the bill's eligibility changes for non-primary residences;
- Revises the signed acknowledgment of potential policyholder surcharge and assessment liability that agents must obtain from an applicant for Citizens coverage for the purpose of conforming the revised surcharge and assessment liabilities associated with the reorganization of Citizens into a single account; and
- Makes technical and clarifying changes.

II. Present Situation:

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[1] Citizens is not a private insurance company.[2] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).[3]

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[4] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[5] The Governor appoints an additional member who

[1] The term "admitted market" means insurance companies licensed to transact insurance in Florida.
[2] Section 627.351(6)(a)1., F.S.
[3] Section 2, ch. 2002-240, Laws of Fla.
[4] Section 627.351(6)(a)2., F.S.
[5] Section 627.351(6)(c)4.a., F.S.

serves solely to advocate on behalf of the consumer.[6] Citizens is subject to regulation by the Office of Insurance Regulation (OIR).

Current Policies

As of November 30, 2023, Citizens reports 1,260,430 policies in-force with a total exposure of $562.5 billion.[7] That is a reduction of over 74,000 policies and $23.3 billion in exposure from October 31, 2023.

Eligibility for Insurance in Citizens

Citizens is required to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provide specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property.[8] Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.[9]

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more. [10] The coverage offered by the private insurer must be comparable to Citizens coverage.

A residential policyholder may not renew insurance in Citizens if an authorized insurer offers to insure the property at a premium no more than 20 percent greater than the Citizens renewal premium.[11] The insurance coverage offered from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.[12]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[13] Structures with a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[14] However, Citizens is allowed to insure structures with a dwelling replacement cost, or a condominium unit with a dwelling and contents

[6] Section 627.351(6)(c)4., F.S.
[7] Corporate Analytics Business Overview, September 20, 2023 Report, p.1 https://www.citizensfla.com/documents (last visited January 10, 2024).
[8] Section 627.351(6)(c)5., F.S.
[9] *See* Citizens Property Insurance Corporation, *PIF Standard Summary Report for Period Ending Nov. 30, 2023 (December 6, 2023)* (On file with the Florida Senate Banking and Insurance Committee).
[10] Section 627.351(6)(c)5., F.S.
[11] Section 627.351(6)(c)5.a., F.S.
[12] *Id.*
[13] Section 627.351(6)(a)3., F.S.
[14] Section 627.351(6)(a)3.d., F.S.

replacement cost, of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[15]

Citizens "Glidepath" Rates

From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006.[16] In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[17] In 2021, the Legislature revised this glidepath to increase it one percent per year to up to 15 percent, as follows:[18]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.[19] In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.[20] The glidepath does not apply to policies written on or after November 1, 2023, that:

- Do not cover a primary residence;
- New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or
- Subsequent renewals of those policies.[21]

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.[22] In the event of a catastrophic storm or series of smaller storms, reserves could be

[15] The OIR, Final Order Case No: 165625-14, Dec. 22, 2014, https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf;*See also* Section 627.351(6)(a)3.d., F.S., and Citizens, *Update to Maximum Coverage Limits,* Nov. 12, 2019, https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits (all sites last visited January 10, 2024).
[16] Section 15, ch. 2006-12, Laws of Fla.
[17] Section 10, ch. 2009-87, Laws of Fla.
[18] Section 627.351(6)(n)5., F.S.
[19] Section 627.351(6)(n)7., F.S.
[20] Section 627.351(6)(n)6., F.S.
[21] Section 627.351(6)(n)8., F.S.
[22] Citizens, *2023 Rate Kit,* https://www.citizensfla.com/documents/ (last visited January 10, 2024).

exhausted, leaving Citizens unable to pay all claims.[23] Under Florida law, if the Citizens Board of Directors determines a Citizens account has a projected deficit, Citizens is authorized to levy assessments[24] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[25]

Citizens Accounts

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.[26]

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[27]

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[28]

The Legislature has authorized Citizens to combine its three accounts into a single account, which will ensure that Citizens has access to all of its assets to pay loss claims. The new account is referred to as the Citizens account and will offer the various coverages and policies provided pursuant to the three account structure. The combination of the Citizens accounts into a single account will enable Citizens to have access to all of its surplus when paying claims. Under the three account structure, a deficit could occur in one of the accounts that necessitates surcharges and assessments on Citizens policyholders and policyholders in the private market even though one of the other Citizens accounts still has a surplus that could have resolved the deficit in the other account.

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[23] Citizens, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited January 10, 2024).
[24] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.
[25] Accident and health insurance policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.
[26] *See* s. 627.351(6)(b)2.a., F.S.,; Citizens, *Account History and Characteristics*, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (Mar. 2016) (last visited Dec. 4, 2022).
[27] *Id.*
[28] *Id.*

Citizens Assessment Authority

Under the three account structure, in the event Citizens has insufficient funds to pay claims in any account, the corporation must impose up to a policyholder surcharge of up to 15 percent of premium. Each assessment is charged to all Citizens policyholders regardless of which account their policies are written in, thus a Citizens policyholder has a possible assessment liability of 45 percent of premium on policyholders of the corporation. If a deficit in the coastal account remains after imposition of the 15 percent policyholder surcharge for that account, Citizens must impose a 2 percent regular assessment on assessable statewide premium on private market insureds. Citizens policyholders are not subject to the 2 percent regular assessment. If the maximum policyholder surcharge is imposed (and for a Coastal Account deficit, the 2 percent regular assessment is also imposed) and Citizens is still in a deficit, then it must impose an emergency assessment of up to 10% per year, per account, on assessable statewide premium on both private market insureds and Citizens insureds. The emergency assessments of up to 10 percent per account may be imposed for as many years as is necessary to resolve the Citizens deficit.[29]

Under the single account structure, in the event Citizens has insufficient funds to pay claims, the corporation must impose a policyholder surcharge of up to 15 percent of premium on policyholders of the corporation. If the maximum policyholder surcharge is imposed and Citizens is still in a deficit, then it must impose an emergency assessment of up to 10 percent per year on assessable statewide premium on both private market insureds and Citizens insureds. The emergency assessments may be imposed for as many years as is necessary to resolve the Citizens deficit.[30]

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[31] In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to take-out agreements.[32] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;[33]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting a take-out policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and agent regarding all insurers requesting to take out the policy and the policyholder's option to accept a take-out offer or to reject all take out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

[29] Section 627.351(6)(b)3., F.S.
[30] Section 627.351(6)(b)5., F.S.
[31] Section 627.351(6)(q)3.a., F.S.
[32] Chapter 2016-229, Laws of Fla.
[33] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

- The amount of the estimated premium;
- A description of the coverage; and
- A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[34] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.[35] An applicant for new coverage, or an insured for renewed coverage, is not eligible for coverage from Citizens if the premium offered from an authorized insurer is at or below the eligibility threshold for new personal lines residential risks of more than 20 percent.[36] An applicant for coverage who was declared ineligible for coverage at renewal by Citizens in the previous 36 months must be considered a renewal under the Citizens clearinghouse statute if the authorized insurer making the offer continues to insure the applicant and increased the rate higher than allowed under s. 627.351(6)(n)5., F.S.[37]

Citizens Flood Insurance Requirement

Citizens personal lines residential policyholders must secure and maintain flood insurance that meets certain requirements as a condition of eligibility for Citizens coverage.[38] The implementation of this requirement is based on as schedule.[39] For Citizens personal lines residential policyholders whose property is located within special hazard flood zones defined by the FEMA, flood coverage must be obtained by:

- April 1, 2023 for Citizens new policies.
- July 1, 2023 for Citizens renewal policies.

For all other risks, the requirement to obtain flood insurance must be implemented for specified Citizens policyholders as follows:

- March 1, 2024, for policies insuring a structure that has a dwelling replacement cost of $600,000 or more.
- March 1, 2025, for policies insuring a structure that has a dwelling replacement cost of $500,000 or more.
- March 1, 2026, for policies insuring a structure that has a dwelling replacement cost of $400,000 or more.
- March 1, 2027, for all other policyholders.

The requirement to obtain flood insurance does not apply to policies that do not provide coverage for the peril of wind or to policies that provide coverage under a condominium unit owners form.[40]

[34] Section 10, ch. 2013-60, Laws of Fla.
[35] Section 627.3518(2)-(3), F.S.
[36] Section 627.3518(5), F.S.
[37] *Id.*
[38] Section 627.351(6)(aa), F.S.
[39] *Id.*
[40] Section 627.351(6)(aa)3., F.S.

III. Effect of Proposed Changes:

The bill revises Citizens eligibility criteria for personal lines residential risks that are not primary residences, and authorizes surplus lines insurers meeting certain criteria to make take-out offers of coverage that render such policies ineligible for Citizens. A "primary residence" is defined as a dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

With regard to eligibility of risks that are not primary residences, the bill makes a non-primary residence ineligible for Citizens coverage upon receiving an offer of coverage at any rate, and does not require that the offer provide coverage that is comparable to that provided by a Citizens policy.

The bill authorizes surplus lines insurers to submit take-out offers to Citizens risks that are not primary residences if the surplus lines insurer has an "A" financial strength rating from A.M. Best and the surplus lines insurer's personal lines residential risk program is managed by a Florida resident surplus lines broker. The surplus lines take-out offer plan must first be approved by the OIR at the rate approved by the OIR.

The bill makes statutory changes to facilitate the transition of Citizens from an organizational structure where Citizens policies are held in three different accounts (a personal lines account, commercial account, and a coastal account) to a structure where all Citizens policies are held in a single account (the Citizens account).

The bill also:

- Provides that only licensed agents holding appointments by at least three authorized insurers that are actually writing or renewing property insurance in this state may be appointed by Citizens as its licensed agents;
- Provides that the executive director of Citizens is the Agency head of Citizens for purposes of procurement bid protests under s. 287.057, F.S., and authorizes the executive director to appoint a designee to act on his or her behalf for all purposes under the that statute;
- Deletes language prohibiting the application of the Division of Administrative Hearing's bond requirements related to Citizens bid protest hearings;
- Allows licensed surplus lines agents access to confidential and exempt claims files for the purpose of considering whether to write a risk currently insured by Citizens;
- Authorizes Citizens to share its claims data with the National Insurance Crime Bureau, so long as the NICB maintains the confidentiality of certain documents;
- Authorizes Citizens to acquire patents, trademarks, and copyrights on work products and take action to enforce its rights therein;
- Revises s. 627.3518, F.S., the Citizens clearinghouse statute, to conform to the bill's eligibility changes for non-primary residences;
- Revises the signed acknowledgment of potential policyholder surcharge and assessment liability that agents must obtain from an applicant for Citizens coverage for the purpose of conforming the revised surcharge and assessment liabilities associated with the reorganization of Citizens into a single account; and

- Makes technical and clarifying changes.

The bill is effective July 1, 2024.

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.

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:

This bill substantially amends the following sections of the Florida Statutes: 627.351, 627.3511, and 627.3518.

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 Banking and Insurance Committee on January 29, 2024
The committee substitute:

- Limits surplus lines take-out offers on Citizens policies to personal lines residential risks that are non-primary residences;
- Eliminates language that would have allowed surplus lines take-out offers to commercial lines residential risks (such as a condominium associations);
- Removes from the bill proposed revisions to the policyholder choice provisions of s. 627.3517, F.S., related to surplus lines take-out offers; and
- Makes conforming changes to the Citizens clearinghouse statute in s. 627.3518, F.S., necessitated by the creation of new eligibility standards for personal lines risks that are not primary residences.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Boyd

597-02636-24 20241716c1

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; providing that certain accounts for Citizens Property Insurance Corporation revenues, assets, liabilities, losses, and expenses are now maintained as the Citizens account; revising the requirements for certain coverages by the corporation; requiring the inclusion of quota share primary insurance in certain policies; deleting provisions relating to legislative goals; revising the definition of the term "assessments"; deleting provisions relating to emergency assessments upon determination of projected deficits; deleting provisions relating to funds available to the corporation as sources of revenue and bonds; deleting definitions; deleting provisions relating to the duties of the Florida Surplus Lines Service Office; deleting provisions relating to disposition of excess amounts of assessments and surcharges; defining the terms "approved surplus lines insurer" and "primary residence"; providing applicability of certain provisions relating to personal lines residential risks coverage by the corporation; revising eligibility for commercial lines residential risks coverage by the corporation; providing that commercial lines residential risks are not eligible for coverage by the corporation under certain circumstances; providing that comparisons of comparable coverages under certain personal lines residential risks and

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commercial lines residential risks do not apply to policies that do not cover primary residences; revising the corporation's plan of operation; revising the required statements from applicants for coverage; revising the duties of the executive director of the corporation; authorizing the executive director to assign and appoint designees; deleting a applicability provision relating to bond requirements; providing circumstances under which coverage rates are considered not competitive; revising the duties of the Office of Insurance Regulation relating to coverage rates; authorizing the corporation to pursue administrative challenges relating to coverage rates; revising requirements for coverage rate increases and coverage rates; authorizing assessed insureds of certain insurers to be relieved from assessments under certain circumstances; deleting provisions relating to certain insurer assessment deferments; deleting provisions relating to the intangibles of and coverage by the Florida Windstorm Underwriting Association and the corporation coastal account; authorizing the corporation and certain persons to make specified information obtained from underwriting files and confidential claims files available to licensed surplus lines agents; prohibiting such agents from using such information for specified purposes; providing applicability of provisions relating to take-out offers that are part of applications to participate in depopulation; authorizing the

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

corporation to share its claims data with a specified entity; deleting provisions relating to resolutions of disputes and to determinations of risks ineligible for coverage; amending s. 627.3511, F.S.; conforming provisions to changes made by the act; conforming cross-references; amending s. 627.3518, F.S.; revising eligibility requirements for applicants for new coverage; defining the term "primary residence"; providing an effective date.

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

Section 1. Present subsection (7) of section 627.351, Florida Statutes, is redesignated as subsection (8), a new subsection (7) is added to that section, paragraph (nn) is added to subsection (6) of that section, and paragraph (b) of subsection (2) and paragraphs (a), (b), (c), (e), (n) through (q), (v), (w), (x), (z), and (ii) of subsection (6) of that section are amended, to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a direct basis in this state, other than joint underwriting associations and other entities formed pursuant to this section, to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or

plans for the equitable apportionment or sharing among such insurers of windstorm coverage, which may include formation of an association for this purpose. As used in this subsection, the term "property insurance" means insurance on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverages on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1)(a) other than insurance on mobile homes used as permanent dwellings. The department shall adopt rules that provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties. An applicant or policyholder is eligible for coverage only if an offer of coverage cannot be obtained by or for the applicant or policyholder from an admitted insurer at approved rates.

2.a.(I) All insurers required to be members of such association shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer

written for property insurance in this state during the preceding calendar year bear to the aggregate net direct premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, in this state during the preceding calendar year. For the purposes of this subsection, the term "net direct premiums" means direct written premiums for property insurance, reduced by premium for liability coverage and for the following if included in allied lines: rain and hail on growing crops; livestock; association direct premiums booked; National Flood Insurance Program direct premiums; and similar deductions specifically authorized by the plan of operation and approved by the department. A member's participation shall begin on the first day of the calendar year following the year in which it is issued a certificate of authority to transact property insurance in the state and shall terminate 1 year after the end of the calendar year during which it no longer holds a certificate of authority to transact property insurance in the state. The commissioner, after review of annual statements, other reports, and any other statistics that the commissioner deems necessary, shall certify to the association the aggregate direct premiums written for property insurance in this state by all member insurers.

(II) Effective July 1, 2002, the association shall operate subject to the supervision and approval of a board of governors who are the same individuals that have been appointed by the Treasurer to serve on the board of governors of the Citizens Property Insurance Corporation.

(III) The plan of operation shall provide a formula whereby a company voluntarily providing windstorm coverage in affected

areas will be relieved wholly or partially from apportionment of a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

(IV) A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

(V) There shall be no credits or relief from apportionment to a company for emergency assessments collected from its policyholders under sub-sub-subparagraph d.(III).

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Miami-Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Miami-Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or

15 percent of the total number of Residential Property and Casualty Joint Underwriting Association policies, provided the governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

b. Assessments to pay deficits in the association under this subparagraph shall be included as an appropriate factor in the making of rates as provided in s. 627.3512.

c. The Legislature finds that the potential for unlimited deficit assessments under this subparagraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the association was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for paying regular assessments and collecting emergency assessments for any deficits of the association; however, it is also the intent of the Legislature to provide a means by which assessment liabilities may be amortized over a period of years.

d.(I) When the deficit incurred in a particular calendar year is 10 percent or less of the aggregate statewide direct

written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the deficit.

(II) When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance policy premiums, as annually determined by the board and verified by the department. The department shall verify the

arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may pledge the proceeds of the emergency assessments under this sub-sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the

document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

(IV) Each member insurer's share of the total regular assessments under sub-sub-subparagraph (I) or sub-sub-subparagraph (II) shall be in the proportion that the insurer's net direct premium for property insurance in this state, for the year preceding the assessment bears to the aggregate statewide net direct premium for property insurance of all member insurers, as reduced by any credits for voluntary writings for that year.

(V) If regular deficit assessments are made under sub-sub-subparagraph (I) or sub-sub-subparagraph (II)~~, or by the Residential Property and Casualty Joint Underwriting Association under sub-subparagraph (6)(b)3.a.~~, the association shall levy upon the association's policyholders, as part of its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for property insurance for member insurers for the prior calendar year. Market equalization surcharges under this sub-sub-subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

e. The governing body of any unit of local government, any

residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 to fund an assistance program, in conjunction with the association, for the purpose of defraying deficits of the association. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the association, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may enter into such contracts with the association and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this subparagraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such

bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a member company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds $50 million after payment of available plan funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed

under sub-sub-subparagraph 2.d.(III). The plan shall provide that, if the department determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-sub-subparagraph 2.d.(III).

4. The plan shall provide for the deferment, in whole or in part, of a regular assessment of a member insurer under sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not for an emergency assessment collected from policyholders under sub-sub-subparagraph 2.d.(III), if, in the opinion of the commissioner, payment of such regular assessment would endanger or impair the solvency of the member insurer. In the event a regular assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

5.a. The plan of operation may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

b. It is the intent of the Legislature that the rates for coverage provided by the association be actuarially sound and not competitive with approved rates charged in the admitted voluntary market such that the association functions as a residual market mechanism to provide insurance only when the

insurance cannot be procured in the voluntary market. The plan of operation shall provide a mechanism to assure that, beginning no later than January 1, 1999, the rates charged by the association for each line of business are reflective of approved rates in the voluntary market for hurricane coverage for each line of business in the various areas eligible for association coverage.

c. The association shall provide for windstorm coverage on residential properties in limits up to $10 million for commercial lines residential risks and up to $1 million for personal lines residential risks. If coverage with the association is sought for a residential risk valued in excess of these limits, coverage shall be available to the risk up to the replacement cost or actual cash value of the property, at the option of the insured, if coverage for the risk cannot be located in the authorized market. The association must accept a commercial lines residential risk with limits above $10 million or a personal lines residential risk with limits above $1 million if coverage is not available in the authorized market. The association may write coverage above the limits specified in this subparagraph with or without facultative or other reinsurance coverage, as the association determines appropriate.

d. The plan of operation must provide objective criteria and procedures, approved by the department, to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

(I) Whether the likelihood of a loss for the individual

risk is substantially higher than for other risks of the same class; and

(II) Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the association pursuant to such criteria and procedures must be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

e. If the risk accepts an offer of coverage through the market assistance program or through a mechanism established by the association, either before the policy is issued by the association or during the first 30 days of coverage by the association, and the producing agent who submitted the application to the association is not currently appointed by the insurer, the insurer shall:

(I) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance

with sub-sub-subparagraph (I). Subject to the provisions of s. 627.3517, the policies issued by the association must provide that if the association obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy must be canceled as of 60 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this sub-subparagraph.

f. When the association enters into a contractual agreement for a take-out plan, the producing agent of record of the association policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(I) Pay to the producing agent of record of the association policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the association policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

6.a. The plan of operation may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, a partnership, a trust, a limited liability company, or a nonprofit mutual company which may be empowered, among other things, to borrow money by issuing bonds or by incurring other indebtedness and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan may authorize all actions necessary to facilitate the issuance of bonds, including the pledging of assessments or other revenues.

b. Any entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued, may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (6)(q)2., in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by

the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. Any such entity may accumulate reserves and retain surpluses as of the end of any association year to provide for the payment of losses incurred by the association during that year or any future year. The association shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

c. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness issued or incurred by the association or any other entity created under this subsection.

7. On such coverage, an agent’s remuneration shall be that amount of money payable to the agent by the terms of his or her contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that

company.

8. Subject to approval by the department, the association may establish different eligibility requirements and operational procedures for any line or type of coverage for any specified eligible area or portion of an eligible area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the association. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

9. Notwithstanding any other provision of law:

a. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the association created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the association shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the association under the laws of this state or any other applicable laws.

b. No such proceeding shall relieve the association of its

obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or any other rights, revenues, or other assets of the association pledged.

c. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, emergency assessments, market equalization or renewal surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of or after any such proceeding shall continue unaffected by such proceeding.

d. As used in this subsection, the term "financing documents" means any agreement, instrument, or other document now existing or hereafter created evidencing any bonds or other indebtedness of the association or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the association are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation of the association related to such bonds or indebtedness.

e. Any such pledge or sale of assessments, revenues, contract rights or other rights or assets of the association shall constitute a lien and security interest, or sale, as the

case may be, that is immediately effective and attaches to such assessments, revenues, contract, or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, contract, or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

f. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, agents or employees of the association, members of the board of directors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance

coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that

the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. ~~Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents~~

~~replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

~~b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.~~

~~c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.~~

~~d.~~ Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for

coverage by the corporation. ~~Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.~~

b. The requirements of sub-subparagraph a. ~~sub-subparagraphs b. d.~~ do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening

protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a

certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.~~a.~~ All revenues, assets, liabilities, losses, and expenses of the corporation shall be maintained in the Citizens account. The Citizens account may provide ~~divided into three separate accounts as follows~~:

a.~~(I) A personal lines account for~~ Personal residential policies that provide ~~issued by the corporation which provides~~ comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

b.~~(II) A commercial lines account for~~ Commercial residential and commercial nonresidential policies that provide ~~issued by the corporation which provides~~ coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

c.~~(III) A coastal account for~~ Personal residential policies and commercial residential and commercial nonresidential property policies that provide ~~issued by the corporation which provides~~ coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm

Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002 ~~in the coastal account~~. ~~Effective July 1, 2014,~~ The corporation may not offer ~~shall cease offering~~ new commercial residential policies providing multiperil coverage but ~~and~~ shall ~~instead~~ continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. However, the corporation may~~, however,~~ continue to renew a commercial residential multiperil policy on a building that was ~~is~~ insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas ~~the personal lines account~~. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also

purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.:

(I) Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002;

(II) Policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002;

(III) Commercial residential wind-only policies;

(IV) Commercial residential policies excluding wind, if offered by the corporation; and

(V) Commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014 ~~It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage~~

~~in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2.~~

The area eligible for coverage with the corporation under this sub-subparagraph ~~under the coastal account also~~ includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

3. With respect to a deficit in the Citizens account:

a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium

~~b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If no such financing obligations remain outstanding or if the financing documents allow for combining of accounts, the corporation may consolidate the three separate accounts into a new account, to be known as the Citizens account, for all revenues, assets, liabilities, losses, and expenses of the corporation. The Citizens account, if established by the corporation, is authorized to provide coverage to the same extent as provided under each of the three separate accounts. The authority to provide coverage under the Citizens account is set forth in subparagraph 4. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account. Once the accounts are combined into one account, this subparagraph and subparagraph 3. shall be replaced in their entirety by subparagraphs 4. and 5.~~

~~c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).~~

~~d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.~~

~~e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.~~

~~f. The income of the corporation may not inure to the benefit of any private person.~~

~~3. With respect to a deficit in an account:~~

~~a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph j., if the remaining projected deficit incurred in the coastal account in a particular calendar year:~~

~~(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.~~

~~(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct~~

~~written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph c.~~

~~b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.~~

~~c. The corporation may not levy regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. if the three separate accounts in sub-sub-~~

~~subparagraphs 2.a.(I)-(III) have been consolidated into the Citizens account pursuant to sub-subparagraph 2.b. However, the outstanding balance of any regular assessment levied by the corporation before establishment of the Citizens account remains payable to the corporation.~~

b.~~d.~~ After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a. ~~j.~~, the remaining projected deficits in the Citizens ~~personal lines~~ account ~~and in the commercial lines account~~ in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c. ~~c.~~

c.~~e.~~ Upon a determination by the board of governors that a projected deficit in the Citizens ~~an~~ account exceeds the amount that is expected to be recovered through surcharges ~~regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph j.~~, the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account ~~all accounts of the corporation~~, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the

information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other ~~provision of~~ law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens ~~applicable~~ account. The aggregate amount of emergency assessments levied for the Citizens ~~an~~ account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens account ~~all accounts~~ of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with

financing the deficit.

d.~~f.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency ~~regular~~ assessments under sub-subparagraph c. ~~a. or subparagraph (q)1. and emergency assessments under sub-subparagraph e.~~ Emergency assessments collected under sub-subparagraph c. ~~e.~~ are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

e.~~g.~~ As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

f.~~h.~~ The Florida Surplus Lines Service Office shall annually determine ~~annually~~ the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

g.~~i.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for ~~regular assessments and~~ emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by

the corporation.

~~j. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.~~

~~(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.~~

h.~~k.~~ If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding

debt.

~~4. The Citizens account, if established by the corporation pursuant to sub-subparagraph 2.b., is authorized to provide:~~

~~a. Personal residential policies that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;~~

~~b. Commercial residential and commercial nonresidential policies that provide coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and~~

~~c. Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may not offer new commercial residential policies providing multiperil coverage, but shall continue to offer commercial residential wind-only policies, and may offer~~

~~commercial residential policies excluding wind. However, the corporation may continue to renew a commercial residential multiperil policy on a building that was insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.: Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January~~

~~1, 2002; policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002; commercial residential wind-only policies; commercial residential policies excluding wind, if offered by the corporation; and commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014. The area eligible for coverage with the corporation under this sub-subparagraph includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.~~

~~5. With respect to a deficit in the Citizens account:~~

~~a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure~~

~~to pay the surcharge shall be treated as failure to pay premium.~~

~~b. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a., the remaining projected deficit incurred in the Citizens account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c.~~

~~c. Upon a determination by the board of governors that a projected deficit in the Citizens account exceeds the amount that is expected to be recovered through surcharges under sub-subparagraph a., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account, National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other law, the corporation and each assessable insurer that~~

~~writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens account. The aggregate amount of emergency assessments levied for the Citizens account in any calendar year may be less than, but may not exceed the greater of, 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens accounts for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.~~

~~d. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection; or to retire~~

~~any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency assessments under sub-subparagraph c. Emergency assessments collected under sub-subparagraph c. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.~~

~~c. As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as~~

~~accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.~~

~~f. The Florida Surplus Lines Service Office shall annually determine the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.~~

~~g. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.~~

~~h. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan year deficits or to reduce outstanding debt.~~

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and

casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

f. The corporation may adopt variations of the policy forms

listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. The corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Approved surplus lines insurer" means an eligible surplus lines insurer:

(A) That has a financial strength rating of "A" or higher from A.M. Best Company;

(B) That has a personal lines residential risk program that is managed by a Florida resident surplus lines broker; and

(C) That offers coverage to applicants for new coverage from the corporation or current policyholders of the corporation through a take-out plan approved by the office.

(III) "Primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(IV) ~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and

authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However,

the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies

or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the

office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have

demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by

the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks that are primary residences, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the

premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk that is a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation for policies that renew before April 1, 2023; for policies that renew on or after that date, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term. This sub-subparagraph applies only to risks that are primary residences.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee

equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. A policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the policy term. However, any policy removed from the corporation through an

assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first

year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. For purposes of comparing the premium for comparable coverage under sub-subparagraphs a. and b., premium includes any surcharge or assessment that is actually applied to such policy. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same Coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the

extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage on a risk that is located in an area eligible for coverage by the Florida Windstorm Underwriting Association, as that area was defined on January 1, 2002, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate. However, notwithstanding any other law, this sub-subparagraph does not apply to a personal lines residential policy that does not cover a primary residence.

d. Subject to s. 627.3517, with respect to personal lines residential risks that are not primary residences, if the risk is offered coverage from an authorized insurer at the insurer's approved rate or from an approved surplus lines insurer at the

rate approved by the office as part of such surplus lines insurer's take-out plan for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation. Whenever an offer of coverage for a personal lines residential risk that is not a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer at the insurer's approved rate or an approved surplus lines insurer at the rate approved by the office as part of such insurer's take-out plan, the risk is not eligible for coverage with the corporation for policies that renew on or after July 1, 2024. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation. If the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before

a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to

continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income:

~~a.~~ for the Citizens ~~an~~ account, which are attributable to a particular calendar year, are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be available to defray deficits in the Citizens ~~that~~ account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~; or~~

~~b. For the Citizens account, if established by the corporation, which are attributable to a particular calendar year are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be available to defray deficits in the Citizens account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an

individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be

replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. ~~Must provide that:~~

~~a. With respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the~~

~~assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.c. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.c. may not be limited or deferred; or~~

~~b. With respect to the Citizens account, if established by the corporation pursuant to sub-subparagraph (b)2.b., any assessable insurer with a surplus as to policyholders of $25 million or less and writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)5.c. An emergency assessment to be collected from policyholders under sub-subparagraph (b)5.c. may not be limited or deferred.~~

~~14.~~ Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015

by at least three insurers ~~an insurer~~ who are ~~is~~ authorized to write and are ~~is~~ actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

14.~~15.~~ Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

15.~~16.~~ Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

16.~~17.~~ Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

17.~~18.~~ May provide such limits of coverage as the board

determines, consistent with the requirements of this subsection.

18.~~19.~~ May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19.~~20.~~ Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

20.a.~~21.a. As of January 1, 2012, unless the Citizens account has been established pursuant to sub-subparagraph (b)2.b.,~~ Must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND

ASSESSMENTS COULD BE AS HIGH AS 25 ~~45~~ PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 ~~45~~ PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

~~b. The corporation must require, if it has established the Citizens account pursuant to sub-subparagraph (b)2.b., that the agent obtain from an applicant for coverage from the corporation the following acknowledgment signed by the applicant, which includes, at a minimum, the following statement:~~

~~ACKNOWLEDGMENT OF POTENTIAL SURCHARGE~~
~~AND ASSESSMENT LIABILITY:~~

~~1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,~~

~~MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND ASSESSMENTS COULD BE AS HIGH AS 25 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.~~

~~3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.~~

b.~~c.~~ The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of sub-subparagraph a. ~~or sub-subparagraph b., as applicable.~~

c.~~d.~~ The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. Contracts for goods or services valued at or more than $100,000 are subject to approval by the board.

1. The corporation is an agency for purposes of s. 287.057, except that, for purposes of s. 287.057(24), the corporation is an eligible user.

a. The authority of the Department of Management Services and the Chief Financial Officer under s. 287.057 extends to the corporation as if the corporation were an agency.

b. The executive director of the corporation is the agency head under s. 287.057~~, except for resolution of bid protests for which the board would serve as the agency head~~. The executive director of the corporation may assign or appoint a designee to act on his or her behalf.

2. The corporation must provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. Such notice must contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver of proceedings."

a. A person adversely affected by the corporation's decision or intended decision to award a contract pursuant to s.

287.057(1) or (3)(c) who elects to challenge the decision must file a written notice of protest with the executive director of the corporation within 72 hours after the corporation posts a notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after posting the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual agreement within 7 business days, the corporation's board must

transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine the merits of the protest and to issue a recommended order. The contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings~~, the division's applicable bond requirements do not apply~~. The protest must be heard by the division at a publicly noticed meeting in accordance with procedures established by the division.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the

proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

d. Failure to file a notice of protest or failure to file a formal written protest constitutes a waiver of proceedings.

3. The ~~board, acting as~~ agency head or his or her designee~~,~~ shall consider the recommended order of an administrative law judge ~~in a public meeting~~ and take final action on the protest. Any further legal remedy lies with the First District Court of Appeal.

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive.

The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation

may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. ~~Twelve percent for 2023.~~

~~b.~~ Thirteen percent for 2024.

b.~~c.~~ Fourteen percent for 2025.

c.~~d.~~ Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. The following new or renewal personal lines policies written on or after November 1, 2023, are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, and may not be charged ~~nor~~ less than, the prior year's established rate for the corporation:

a. Policies that do not cover a primary residence;

b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or

c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(o) If coverage in ~~an account, or~~ the Citizens account ~~if established by the corporation,~~ is deactivated pursuant to paragraph (p), coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from authorized ~~admitted~~ carriers at their approved ~~filed~~ rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability

of residential property insurance.

(p)1. The corporation shall file with the office quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the office monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the office requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office to determine whether coverage shall be deactivated in ~~an account, or in~~ the Citizens account ~~if established by the corporation,~~ on the basis that the conditions giving rise to its activation no longer exist.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated, if authority to levy exists, as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied

as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants

and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.c. ~~(b)3.c.~~, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments ~~under sub-subparagraph (b)3.a~~. In addition, in the

event policies are taken out by an approved surplus lines insurer, such insurer's assessable insureds may also be relieved wholly or partially from assessments. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may

extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.c. ~~sub-subparagraph (b)3.c. or sub-subparagraph (b)5.c.~~

4. ~~The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.c. or sub-subparagraph (b)5.c., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).~~

~~5.~~ Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

5.~~6.~~ Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer

and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

6.~~7.~~ For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(v)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association become policies of the corporation. All obligations, rights, assets and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and become policies of the corporation. All obligations, rights, assets, and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the

Residential Property and Casualty Joint Underwriting Association shall take all actions necessary to further evidence the transfers and provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. ~~Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the coastal account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.~~

4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation does not affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. ~~The coverage provided by the fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter, unless the corporation has established the Citizens account, shall be redesignated as coverage for the coastal account of the corporation. Notwithstanding any other provision of law, the coverage provided by the fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter, unless the corporation has established the Citizens account, shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the coastal account, unless the corporation has established the Citizens account, shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts, unless the corporation has established the Citizens account, shall be viewed together, for all fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement.~~ The coverage

provided by the fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association to the corporation.

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. The proceeding does not relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, policyholder surcharges or other surcharges ~~under sub-subparagraph (b)3.j.~~, or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, policyholder surcharges or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used

in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or

other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as

otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all

records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from

underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, a licensed surplus lines agent, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed surplus lines agent or licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by

the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(z) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the

Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the Citizens ~~applicable~~ account ~~of the corporation~~. So long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit

compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.

3. If a policyholder receives a take-out offer from an authorized insurer, the risk is no longer eligible for coverage

with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation pursuant to sub-subparagraph (c)5.c. This subparagraph applies to take-out offers that are part of an application to participate in depopulation submitted to the office on or after January 1, 2023. This subparagraph only applies to a policy that covers a primary residence.

4. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

(nn) The corporation may share its claims data with the National Insurance Crime Bureau, provided that the National Insurance Crime Bureau agrees to maintain the confidentiality of such documents as otherwise provided for in paragraph (x).

(7) TRADEMARKS, COPYRIGHTS, OR PATENTS.—Notwithstanding any other law, the corporation is authorized, in its own name, to:

(a) Perform all things necessary to secure letters of patent, copyrights, or trademarks on any work products and enforce its rights therein.

(b) License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture

or use thereof, on a royalty basis or for such other consideration as the corporation deems proper.

(c) Take any action necessary, including legal action, to protect trademarks, copyrights, or patents against improper or unlawful use or infringement.

(d) Enforce the collection of any sums due the corporation for the manufacture or use thereof by any other party.

(e) Sell any of its trademarks, copyrights, or patents and execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties herein conferred upon the corporation in order to administer this subsection.

Section 2. Paragraphs (a), (b), and (c) of subsection (3) and paragraphs (d), (e), and (f) of subsection (6) of section 627.3511, Florida Statutes, are amended to read:

627.3511 Depopulation of Citizens Property Insurance Corporation.—

(3) EXEMPTION FROM DEFICIT ASSESSMENTS.—

(a) The calculation of an insurer's ~~assessment~~ liability ~~under s. 627.351(6)(b)3.a.~~ shall, for an insurer that in any calendar year removes 50,000 or more risks from the Citizens Property Insurance Corporation, either by issuance of a policy upon expiration or cancellation of the corporation policy or by assumption of the corporation's obligations with respect to in-force policies, exclude such removed policies for the succeeding 3 years, as follows:

1. In the first year following removal of the risks, the risks are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the risks, the risks are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the risks, the risks are excluded from the calculation to the extent of 50 percent.

If the removal of risks is accomplished through assumption of obligations with respect to in-force policies, the corporation shall pay to the assuming insurer all unearned premium with respect to such policies less any policy acquisition costs agreed to by the corporation and assuming insurer. The term "policy acquisition costs" is defined as costs of issuance of the policy by the corporation which includes agent commissions, servicing company fees, and premium tax. This paragraph does not apply to an insurer that, at any time within 5 years before removing the risks, had a market share in excess of 0.1 percent of the statewide aggregate gross direct written premium for any line of property insurance, or to an affiliate of such an insurer. This paragraph does not apply unless either at least 40 percent of the risks removed from the corporation are located in Miami-Dade, Broward, and Palm Beach Counties, or at least 30 percent of the risks removed from the corporation are located in such counties and an additional 50 percent of the risks removed from the corporation are located in other coastal counties.

(b) An insurer that first wrote personal lines residential property coverage in this state on or after July 1, 1994, is exempt from liability ~~regular deficit assessments imposed pursuant to s. 627.351(6)(b)3.a.~~, but not emergency assessments

collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, of the Citizens Property Insurance Corporation until the earlier of the following:

1. The end of the calendar year in which it first wrote 0.5 percent or more of the statewide aggregate direct written premium for any line of residential property coverage; or

2. December 31, 1997, or December 31 of the third year in which it wrote such coverage in this state, whichever is later.

(c) Other than an insurer that is exempt under paragraph (b), an insurer that in any calendar year increases its total structure exposure subject to wind coverage by 25 percent or more over its exposure for the preceding calendar year is, with respect to that year, exempt from liability ~~deficit assessments imposed pursuant to s. 627.351(6)(b)3.a.~~, but not from emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, of the Citizens Property Insurance Corporation attributable to such increase in exposure.

(6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.—

(d) The calculation of an insurer's ~~regular assessment~~ liability ~~under s. 627.351(6)(b)3.a.~~, but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, shall, with respect to commercial residential policies removed from the corporation under an approved take-out plan, exclude such removed policies for the succeeding 3 years, as follows:

1. In the first year following removal of the policies, the policies are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the policies,

the policies are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the policies, the policies are excluded from the calculation to the extent of 50 percent.

(e) An insurer that first wrote commercial residential property coverage in this state on or after June 1, 1996, is exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~, but not from emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, with respect to commercial residential policies until the earlier of:

1. The end of the calendar year in which such insurer first wrote 0.5 percent or more of the statewide aggregate direct written premium for commercial residential property coverage; or

2. December 31 of the third year in which such insurer wrote commercial residential property coverage in this state.

(f) An insurer that is not otherwise exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~ with respect to commercial residential policies is, for any calendar year in which such insurer increased its total commercial residential hurricane exposure by 25 percent or more over its exposure for the preceding calendar year, exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~, but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, attributable to such increased exposure.

Section 3. Subsections (5), (6), and (7) of section 627.3518, Florida Statutes, are amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation on a primary residence is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.a. An applicant for new coverage from the corporation on a risk that is not a primary residence is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program if such offer would render the risk ineligible pursuant to s. 627.351(6)(c)5.d. Whenever an offer of coverage for a personal lines risk that is a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer through the program which is at or below the eligibility threshold for policyholders of the corporation established in s. 627.351(6)(c)5.a., the risk is not eligible for coverage with the corporation. Whenever an offer of coverage for a personal lines risk that is not a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer through the program, the risk is not eligible for coverage with the corporation if such offer would render the risk ineligible pursuant to s. 627.351(6)(c)5.d. In the event an offer of coverage on a primary residence for a new applicant is received from an authorized insurer through the program, and the

premium offered exceeds the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk that is a primary residence is received from an authorized insurer at renewal through the program, and the premium offered exceeds the eligibility threshold for policyholders of the corporation established in s. 627.351(6)(c)5.a., the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. As used in this subsection, the term "primary residence" has the same meaning as in s. 627.351(6)(c)2.a.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.d.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such

expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.d.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application,

issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

Section 4. This act shall take effect July 1, 2024.

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 Fiscal Policy

BILL:	SPB 7064
INTRODUCER:	Fiscal Policy Committee
SUBJECT:	Federal Budget Line Item Veto
DATE:	February 16, 2024
REVISED:	2/19/24

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parsons	Yeatman		**FP Submitted as Comm. Bill/Fav.**

I. Summary:

Line-item vetoes allow the head of an executive branch of government to reject certain provisions of bills, while allowing other provisions to become law. Congress passed the Line Item Veto Act (LIVA) of 1996 to give the President of the United States the ability to veto certain appropriations by line item. The U.S. Supreme Court found LIVA unconstitutional, noting that a change that gives the President this authority must come through an amendment to the U.S. Constitution.

Article V of the U.S. Constitution provides the specific process for amending the document. Congress may directly propose amendments to the Constitution, which is the method that has been used for each of the 27 amendments ratified since the Constitution went into effect. Alternatively, upon application by the legislatures of two-thirds of the states, Congress must call a convention for the purpose of proposing amendments. A proposed amendment goes into effect once ratified by the legislatures or state conventions of three-fourths of the states; the method of ratification being solely the choice of Congress.

The concurrent resolution constitutes the state's application to Congress under Article V of the U.S. Constitution to call a convention for the sole purpose of considering and proposing a constitutional amendment giving the President authority to eliminate one or more items of appropriations while approving other portions of a bill.

This concurrent resolution does not have a fiscal impact on the state or local governments.

II. Present Situation:

Amending the United States Constitution

Article V of the U.S. Constitution[1] provides the exclusive process for amending the document.[2] Congress may directly propose amendments to the Constitution, the method used for each of the 27 amendments ratified since the Constitution went into effect. Alternatively, upon application by the legislatures of two-thirds of the states,[3] Congress must call a convention for the purpose of proposing amendments. A proposed amendment goes into effect once ratified by the legislatures or state conventions of three-fourths of the states;[4] the method of ratification being solely the choice of Congress.

State Applications for an Article V Constitutional Convention

Article V requires application to be made by a state's legislature, meaning the representative body authorized to make laws and not referring generally to a state's legislative process.[5] The specific text does not refer to the authority of the President or a Governor to approve or veto legislation[6] and the Governor's approval is not required.

Under Article V, Congress has the exclusive authority to review state applications and determine whether they count toward the two-thirds requirement. While Congress has not specified the form, structure, or content of a valid state application,[7] the accumulation of pending applications from the various states shows Congress groups applications according to the issues expressly stated by the petitioning state rather than simply counting the total number of applications. For example, the current 27 applications seeking a convention on a balanced federal budget amendment are not combined with the four applications requesting a convention for an

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[1] "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall be in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." Art. V, U.S. CONST

[2] "The language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method in which the Constitution has fixed." *Hawke v. Smith*, 253 U.S. 221, 227 (1920). *See* Henry Paul Monaghan, *We the People[s],Original Understanding, and Constitutional Amendment*, 96 Colum. L. Rev. 121, 127 (1996); Arthur Earl Bonfield, *Proposing Constitutional Amendments by Convention: Some Problems*, 39 Notre Dame L. Rev. 659 (1964).

[3] Currently, 34 states.

[4] Currently, 38 states.

[5] *Hawke*, *supra* note 2 at 227.

[6] Sen. Sam J. Ervin, Jr., *Proposed Legislation to Implement the Convention Method of Amending the Constitution*, 66 Mich. L. Rev. 875, 888-889 (1968); See also art. I, s. 7, cl. 2, U.S. CONST.; art. III, s. 8(a), FLA. CONST.

[7] Legislation previously was proposed but never enacted. *See* Kenneth F. Ripple, *Article V and the Proposed Federal Constitutional Convention Procedures Bills*, 3 Cardozo L. Rev. 529, 530-533 (1981-1982); Ervin, *supra* note 6 at 885. *See also* Mary M. Penrose, *Conventional Wisdom: Acknowledging Uncertainty in the Unknown*, 78 Tenn. L. Rev. 789, 796 (2011), citing separate prior legislation filed by Senator Sam Ervin and Senator Jesse Helms.

amendment barring discrimination in public schools to satisfy the necessary two-thirds requirement and call a convention.[8]

Article V requires neither a state application nor the congressional call for a convention to include the specific text of a proposed amendment. Article V authorizes applications to Congress to call a convention "for proposing [a]mendments," apparently requiring the convention to study, debate, and compose the terms of a proposed amendment within the scope of issues authorized in the call.[9] As Article V does not restrict the scope of a state's application, states may request a general convention for any purpose or a convention limited only to certain issues.[10]

There is no court decision on whether a time limit applies to state applications. However, the U.S. Supreme Court determined Congress has sole authority to set a time limit for states to ratify proposed amendments.[11] Federalist Papers 43 and 85[12] imply that applications for a convention should be reasonably contemporaneous, addressing a particular problem or issue recognized by at least two thirds of the states as requiring consideration of constitutional amendment.

Calling an Article V Convention on Application by the States

Article V states that "Congress…on the Application of the Legislatures of two thirds of the several states, shall call a Convention…" (emphasis supplied). As the U.S. Supreme Court has interpreted the text as "plain" and its interpretation "admits of no doubt,"[13] the general consensus appears to be that once two-thirds of the states apply for a convention on a common topic, Congress has no discretion and must call for the requested convention.[14]

Article V is silent on such matters as the selection of delegates by the states, voting requirements at the convention, and the procedural rules of the convention. Under the Supremacy Clause,[15] because Congress would be exercising its national power provided in Article V, congressional action on these issues would be controlling, particularly on national matters such as the date, time, place, and financing of the convention. Congress also could determine the number of votes allocated to each state and establish uniform requirements for the selection, guidance, removal, and replacement of state delegates. Absent congressional action, each state may be able to decide such matters for itself.

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[8] *See* Selected Memorials, Office of the Clerk of the United States House of Representatives, *available at* https://clerk.house.gov/SelectedMemorial (last visited Jan. 30, 2024).
[9] Michael A. Almond, *Amendment by Convention: Our Next Constitutional Crisis*, 53 N.C. L. Rev. 491, 513 (1975); Robert M. Rhodes, *A Limited Federal Constitutional Convention*, 26 Fla. L. Rev. 1 (1973).
[10] William W. Van Alstyne, *A Response to Justice Thomas Brennan's Remarks at the Thomas M. Cooley Law School Article V Symposium, 28:1* Thomas M. Cooley L. Rev. 51, 54 (2011); Ripple, *supra* note 7 at 548; William W. Van Alstyne, *The Limited Constitutional Convention – The Recurring Answer*, 1979 Duke Law Journal 985; Rhodes, *supra* note 9 at 18.
[11] *Coleman v. Miller*, 307 U.S. 433, 454 (1939); *Dillon v. Gloss*, 256 U.S. 368, 375-376 (1921).
[12] *See* James Madison, *The Federalist No. 43* (January 23, 1788); Alexander Hamilton, *The Federalist No. 85* (May 28, 1788).
[13] Hawke, *supra* note 2 at 227.
[14] Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis*, 81 Constitutional Commentary 53, 80 (2012); Gerald Gunther, *Constitutional Brinksmanship: Stumbling toward a Convention*, 65 A.B.A. J. 1046, 1048 (1979); Almond, *supra* at 498; Ervin, *supra* note 6 at 885; Bonfield, *supra* note 2 at 675. *See also* Alexander Hamilton, *The Federalist No. 85* (May 28, 1788).
[15] Art. VI, cl. 2, U.S. CONST.

Florida Control of Delegates to an Article V Constitutional Convention

The Article V Constitutional Convention Act[16] provides guidelines for Florida to qualify, appoint, remove, and recall delegates to an Article V constitutional convention. These statutes would control absent express directions by Congress on the same issues, whether in the convention call itself or established in separate federal legislation.[17]

Veto Power and Line-item Vetoes

The President, along with the governor of every state,[18] has the ability to reject bills and return them back to the respective legislative body — an action otherwise known as a veto.[19] This power, outlined in the federal and state constitutions respectively, is limited to signing or returning bills in their entirety.[20] Line-item vetoes are a subset of the general veto power; their purpose is to reject specific portions of a bill.[21]

Line-item veto power is most commonly associated with striking certain appropriations from a legislatively created budget, while accepting the other spending provisions.[22] In that context, an executive officer without line-item veto authority may either reject the entire proposed budget or approve it. Forty-four states' constitutions specifically include an executive line-item veto power.[23] Several presidents have argued the necessity of more executive budgetary influence, specifically in the form of line-item veto power.[24]

Line Item Veto Act of 1996 (LIVA)

LIVA was passed by Congress in 1996 and took effect in 1997.[25] LIVA gave the President the ability to "cancel certain items in appropriations and entitlement measures and also certain narrowly applicable tax breaks" within legislation while otherwise signing into law the rest of the

[16] Ss. 11.93-11.9352, F.S.
[17] *See* art. VI, cl. 2, U.S. CONST., the "Supremacy Clause."
[18] *Governors: Powers and Authority*, National Governors Association, https://www.nga.org/governors/powers-and-authority/ (last visited Jan. 30, 2024); "If he approve [the bill] he shall sign it, but if not he shall return it, with his Objections..." Art. I, s. 7, cl. 2, U.S. CONST.
[19] Legal Information Institute, *Veto*, Cornell Law School, https://www.law.cornell.edu/wex/veto (last visited Jan. 31, 2024); *see also Governors: Powers and Authority*, National Governors Association, https://www.nga.org/governors/powers-and-authority/ (last visited Jan. 30, 2024).
[20] *The Presidential Veto and Congressional Veto Override Process*, National Archives and Records Administration, https://www.archives.gov/files/legislative/resources/education/veto/background.pdf (last accessed Jan. 30, 2024).
[21] Legal Information Institute, *Line-item veto*, Cornell Law School, https://www.law.cornell.edu/wex/line-item_veto (last visited Jan. 30, 2024).
[22] *Id.*
[23] *Separation of Powers: Executive Veto Powers*, National Conference of State Legislatures (updated Nov. 16, 2022), https://www.ncsl.org/about-state-legislatures/separation-of-powers-executive-veto-powers (last visited Jan. 30, 2024).
[24] Schmitt at 171-72; *see also* Virginia A. McMurtry, *Item Veto and Expended Impoundment Proposals: History and Current Status*, Congressional Research Services (updated June 18, 2010), https://crsreports.congress.gov/product/pdf/RL/RL33635/20 (last visited Jan. 30, 2024).
[25] Virginia A. McMurtry, *Item Veto and Expended Impoundment Proposals: History and Current Status*, Congressional Research Services (updated June 18, 2010), https://crsreports.congress.gov/product/pdf/RL/RL33635/20 (last visited Jan. 30, 2024).

bill.[26] While LIVA was in effect, then-President Clinton exercised this line item veto power 82 times within federal appropriations acts.[27]

In 1998, the U.S. Supreme Court struck down LIVA as unconstitutional, because it violated the Presentment Clause.[28] The Court emphasized that the Presentment Clause requires the President to either accept and sign into law a whole bill, or reject and return to Congress a whole bill;[29] by striking certain provisions, the President improperly amends legislation.[30] The Court further explained that an executive removal of any portion of text passed by both chambers results in a document which does not comply with the Framers' procedures outlined in the Constitution.[31]

The Court held that if a change were to be made to the President's role in "determining the final text" of legislation, it would need to be done through the procedures for constitutional amendments outlined in Article V.[32]

Florida Line-item Veto Provisions

The Florida Constitution states that the "governor shall be the chief administrative officers of the state responsible for the planning and budgeting for the state."[33] The governor is granted the power to veto specific line items in a general appropriations act or any specific appropriation in a substantive act containing an appropriation.[34] The Legislature can override a governor's line-item veto with a two-thirds vote of each house, just as it can with a standard veto.[35]

III. Effect of Proposed Changes:

The concurrent resolution is the state's application to Congress under Article V of the U.S. Constitution to call a convention for the sole purpose of considering and proposing a constitutional amendment authorizing the President to eliminate one or more items of appropriation while approving other portions of a bill.

The concurrent resolution states that it is a continuing application until the required two-thirds of the states' legislatures have made similar applications on the same subject, and proposes that other state legislatures similarly apply to Congress to call for a convention regarding such an amendment. The concurrent resolution also provides that the application is revoked and withdrawn, nullified, and superseded as if never passed, retroactive to the date of passage, if the application is used to support calling a convention on any other subject.

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[26] *Id.* at 8.
[27] *Id.* at 11.
[28] *Clinton v. City of New York* , 524 U.S. 417, 421 (1998).
[29] *Id.* at 440.
[30] *Id.* at 442.
[31] "Something that might be known as 'Public Law 105-33 as modified by the President' may or may not be desirable, but it is surely not a document that may 'become a law' pursuant to the procedures designed by the Framers of Article I, § 7 of the Constitution." *Id.* at 448-49.
[32] *Id.* at 449.
[33] Art. IV, s. 1(a), FLA.CONST.
[34] Art. III, s. 8(a) and s. 19(b), FLA.CONST.
[35] Art. III, s. 8(c), FLA.CONST.

The concurrent resolution requires copies of the application to be dispatched to the U.S. President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, each member of the Florida delegation to the U.S. Congress, and the presiding officer of each house of the legislature of each state.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If an Article V amendments convention is called, the state might be responsible for the costs of sending delegates to the convention. Whether Congress or the state would be responsible for related expenses for the convention is not a settled issue at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Senate Rules require that concurrent resolutions be read by title on two separate days before a voice vote is taken on adoption unless the matter is decided otherwise by a two-thirds vote of those Senators present.[36]

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.

[36] Florida Senate Rule 4.13 (adopted Nov. 22, 2022).

FOR CONSIDERATION By the Committee on Fiscal Policy

Senate Concurrent Resolution

A concurrent resolution applying to the Congress of the United States to call a constitutional convention for the sole purpose of proposing an amendment to the Constitution of the United States which would authorize the President of the United States to eliminate one or more items of appropriation while approving other portions of a bill.

WHEREAS, despite various efforts to control the explosive growth of federal spending, the President of the United States has had insufficient authority with respect to the budgetary process, and

WHEREAS, the federal budget has not been balanced for decades and, as of 2024, the national debt has increased to more than $34 trillion, and

WHEREAS, presidents of both political parties have cited the need for greater presidential involvement in administering the budgetary affairs of the nation, including having the ability to veto line items from the federal budget, and

WHEREAS, in 44 states, the governor has the constitutional power to veto items of appropriation while approving other portions of a bill, and

WHEREAS, this power has been described by political scholars as a highly desirable one, and one which has had a positive effect on the operation of government, and

WHEREAS, the Congress of the United States passed the Line Item Veto Act of 1996 to enable the president to control "pork barrel spending" in the federal budget, and

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WHEREAS, while the Line Item Veto Act of 1996 was in effect, the president used this authority 82 times to veto line items from the federal budget, and

WHEREAS, in 1998, the Line Item Veto Act of 1996 was found to be unconstitutional by the United States Supreme Court, thus requiring enactment of an amendment to the Constitution of the United States in order for line item veto authorization to be implemented, and

WHEREAS, under Article V of the Constitution of the United States, on the application of the legislatures of two-thirds of the several states, Congress shall call a constitutional convention for the purpose of proposing amendments to the Constitution, NOW, THEREFORE,

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

(1) That the Legislature of the State of Florida applies to Congress, under Article V of the Constitution of the United States, to call a constitutional convention limited to proposing an amendment to the Constitution which would authorize the President of the United States to eliminate one or more items of appropriation while approving other portions of a bill.

(2) That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made applications on the same subject.

BE IT FURTHER RESOLVED that the Legislature of the State of Florida also proposes that the legislatures of the several

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

states comprising the United States apply to Congress to call a constitutional convention for proposing such an amendment to the Constitution of the United States.

BE IT FURTHER RESOLVED that this concurrent resolution is revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used for the purpose of calling a constitutional convention or used in support of conducting a constitutional convention to amend the Constitution of the United States with any agenda other than to propose an amendment to the Constitution which would authorize the President of the United States to eliminate one or more items of appropriation while approving other portions of a bill.

BE IT FURTHER RESOLVED that copies of this application be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, and to the presiding officer of each house of the legislature of each state.

The Florida Senate

APPEARANCE RECORD

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

February 15, 2024
Meeting Date

Fiscal Policy
Committee

7064
Bill Number or Topic

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Phone 850-425-1344

Address 104 S. Monroe Street
Street

Email TcgLobby@aol.com

Tallahassee FL 32301
City *State* *Zip*

Reset Form

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☑ I am a registered lobbyist, representing:
Common Cause Florida

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	SPB 7066
INTRODUCER:	Fiscal Policy Committee
SUBJECT:	Equal Application of the Law
DATE:	February 16, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Nobles	Yeatman		**FP Submitted as Comm. Bill/Fav.**

I. Summary:

Congress has exempted itself from certain laws that are applicable to the other branches of government or the citizenry at large, such as the Federal of Information Act and certain provisions of the Whistleblower Act of 1989. In 1995, Congress passed the Congressional Accountability Act to apply certain laws to Congress to which they had previously exempted themselves. However, there remain federal laws from which Congress has exempted the federal legislative branch, either through not applying the laws to itself or not fully complying with their requirements.

Article V of the United States Constitution provides the specific process for amending the document. Congress may directly propose amendments to the Constitution, which is the method that has been used for each of the 27 amendments ratified since the Constitution went into effect. Alternatively, upon application by the legislatures of two-thirds of the states, Congress must call a convention for the purpose of proposing amendments. A proposed amendment goes into effect once ratified by the legislatures or state conventions of three-fourths of the states; the method of ratification being solely the choice of Congress.

The concurrent resolution constitutes the state's application to Congress under Article V of the U.S. Constitution to call a convention for the sole purpose of considering and proposing a constitutional amendment prohibiting Congress from making any law applying to the citizens of the U.S. that does not also equally apply to all U.S. Representatives and U.S. Senators, and all members of the federal legislative branch.

This concurrent resolution does not have a fiscal impact on the state or local governments.

II. Present Situation:

Amending the United States Constitution

Article V of the U.S. Constitution[1] provides the exclusive process for amending the document.[2] Congress may directly propose amendments to the Constitution, the method used for each of the 27 amendments ratified since the Constitution went into effect. Alternatively, upon application by the legislatures of two-thirds of the states,[3] Congress must call a convention for the purpose of proposing amendments. A proposed amendment goes into effect once ratified by the legislatures or state conventions of three-fourths of the states;[4] the method of ratification being solely the choice of Congress.

State Applications for an Article V Constitutional Convention

Article V requires application to be made by a state's legislature, meaning the representative body authorized to make laws and not referring generally to a state's legislative process.[5] The specific text does not refer to the authority of the President or a Governor to approve or veto legislation[6] and the Governor's approval is not required.

Under Article V, Congress has the exclusive authority to review state applications and determine whether they count toward the two-thirds requirement. While Congress has not specified the form, structure, or content of a valid state application,[7] the accumulation of pending applications from the various states shows Congress groups applications according to the issues expressly stated by the petitioning state rather than simply counting the total number of applications. For example, the current 27 applications seeking a convention on a balanced federal budget amendment are not combined with the four applications requesting a convention for an amendment barring discrimination in public schools to satisfy the necessary two-thirds requirement and call a convention.[8]

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[1] "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall be in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." Art. V, U.S. CONST.

[2] "The language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method in which the Constitution has fixed." *Hawke v. Smith*, 253 U.S. 221, 227 (1920). *See* Henry Paul Monaghan, *We the People[s],Original Understanding, and Constitutional Amendment*, 96 Colum. L. Rev. 121, 127 (1996); Arthur Earl Bonfield, *Proposing Constitutional Amendments by Convention: Some Problems*, 39 Notre Dame L. Rev. 659 (1964).

[3] Currently, 34 states.

[4] Currently, 38 states.

[5] *Hawke*, *supra* note 2 at 227.

[6] Sen. Sam J. Ervin, Jr., *Proposed Legislation to Implement the Convention Method of Amending the Constitution*, 66 Mich. L. Rev. 875, 888-889 (1968); *See also* art. I, s. 7, cl. 2, U.S. CONST.; art. III, s. 8(a), FLA. CONST.

[7] Legislation previously was proposed but never enacted. *See* Kenneth F. Ripple, *Article V and the Proposed Federal Constitutional Convention Procedures Bills*, 3 Cardozo L. Rev. 529, 530-533 (1981-1982); Ervin, *supra* note 6 at 885. *See also* Mary M. Penrose, *Conventional Wisdom: Acknowledging Uncertainty in the Unknown*, 78 Tenn. L. Rev. 789, 796 (2011), citing separate prior legislation filed by Senator Sam Ervin and Senator Jesse Helms.

[8] *See* Selected Memorials, Office of the Clerk of the United States House of Representatives, *available at* https://clerk.house.gov/SelectedMemorial (last visited Jan. 30, 2024).

Article V requires neither a state application nor the congressional call for a convention to include the specific text of a proposed amendment. Article V authorizes applications to Congress to call a convention "for proposing [a]mendments," apparently requiring the convention to study, debate, and compose the terms of a proposed amendment within the scope of issues authorized in the call.[9] As Article V does not restrict the scope of a state's application, states may request a general convention for any purpose or a convention limited only to certain issues.[10]

There is no court decision on whether a time limit applies to state applications. However, the U.S. Supreme Court determined Congress has sole authority to set a time limit for states to ratify proposed amendments.[11] Federalist Papers 43 and 85[12] imply that applications for a convention should be reasonably contemporaneous, addressing a particular problem or issue recognized by at least two-thirds of the states as requiring consideration of constitutional amendment.

Calling an Article V Convention on Application by the States

Article V states that "Congress…on the Application of the Legislatures of two thirds of the several states, shall call a Convention…" (emphasis supplied). As the U.S. Supreme Court has interpreted the text as "plain" and its interpretation "admits of no doubt,"[13] the general consensus appears to be that once two-thirds of the states apply for a convention on a common topic, Congress has no discretion and must call for the requested convention.[14]

Article V is silent on such matters as the selection of delegates by the states, voting requirements at the convention, and the procedural rules of the convention. Under the Supremacy Clause,[15] because Congress would be exercising its national power provided in Article V, congressional action on these issues would be controlling, particularly on national matters such as the date, time, place, and financing of the convention. Congress also could determine the number of votes allocated to each state and establish uniform requirements for the selection, guidance, removal, and replacement of state delegates. Absent congressional action, each state may be able to decide such matters for itself.

Florida Control of Delegates to an Article V Constitutional Convention

The Article V Constitutional Convention Act[16] provides guidelines for Florida to qualify, appoint, remove, and recall delegates to an Article V constitutional convention. These statutes

[9] Michael A. Almond, *Amendment by Convention: Our Next Constitutional Crisis*, 53 N.C. L. Rev. 491, 513 (1975); Robert M. Rhodes, *A Limited Federal Constitutional Convention*, 26 Fla. L. Rev. 1 (1973).
[10] William W. Van Alstyne, *A Response to Justice Thomas Brennan's Remarks at the Thomas M. Cooley Law School Article V Symposium, 28:1 Thomas M. Cooley L. Rev.* 51, 54 (2011); Ripple, *supra* note 7 at 548; William W. Van Alstyne, *The Limited Constitutional Convention – The Recurring Answer*, 1979 *Duke Law Journal* 985; Rhodes, *supra* note 9 at 18.
[11] *Coleman v. Miller*, 307 U.S. 433, 454 (1939); *Dillon v. Gloss*, 256 U.S. 368, 375-376 (1921).
[12] *See* James Madison, *The Federalist No. 43* (January 23, 1788); Alexander Hamilton, *The Federalist No. 85* (May 28, 1788).
[13] *Hawke*, *supra* note 2 at 227.
[14] Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis*, 81 Constitutional Commentary 53, 80 (2012); Gerald Gunther, *Constitutional Brinksmanship: Stumbling toward a Convention*, 65 A.B.A. J. 1046, 1048 (1979); Almond, *supra* at 498; Ervin, *supra* note 6 at 885; Bonfield, *supra* note 2 at 675. *See also* Alexander Hamilton, *The Federalist No. 85* (May 28, 1788)
[15] Art. VI, cl. 2, U.S. CONST.
[16] Ss. 11.93-11.9352, F.S.

would control absent express directions by Congress on the same issues, whether in the convention call itself or established in separate federal legislation.[17]

Due Process in the U.S. Constitution

The statement that no person is to be deprived of life, liberty, or property without due process of law is contained in substantially similar form in both the Fifth and Fourteenth Amendments to the U.S. Constitution.[18] The 5th Amendment, which includes the primary Due Process Clause, applies to the federal government; upon the passage of the 14th Amendment, the states must also comply with the requirements of due process.[19] Both amendments work together to ensure that no governmental entity acts arbitrarily in creating or enforcing laws, and to ensure that every person is entitled to fair procedures.[20] There are two categories of due process (substantive and procedural), but both protect citizens from unfair or undue governmental deprivation.

Equal Protection in the U.S. Constitution

The Fourteenth Amendment to the U.S. Constitution was passed by Congress in 1866 and ratified in 1868.[21] Section 1 of the Fourteenth Amendment states, in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

While the Fourteenth Amendment applied explicitly to the states, the U.S. Supreme Court has interpreted the Fifth Amendment's Due Process Clause, which binds the Federal government, as also guaranteeing a right to equal protection of the laws.[22] Taken together, the Fifth and Fourteenth Amendments to the U.S. Constitution prohibits the federal and state governments from enforcing laws that are discriminately applied to individuals or groups of citizens.[23] This is the notion of equal protection, which, in other words, ensures that laws apply equally to all citizens and that the government does "not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective."[24]

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[17] *See* art. VI, cl. 2, U.S. CONST., the "Supremacy Clause."
[18] "…nor shall any person…be deprived of life, liberty, or property, without due process of law…" Amend. V, U.S. CONST.; "…nor shall any State deprive any person of life, liberty, or property, without due process of law…" Amend. XIV, s. 1, U.S. CONST.
[19] Bill of Rights, including Fifth Amendment, was incorporated and made applicable to the states through the Fourteenth Amendment's Due Process Clause. Legal Information Institute, *Due process*, Cornell Law School (last updated Oct. 2022), https://www.law.cornell.edu/wex/due_process (last visited Jan. 31, 2024); *see also* Legal Information Institute, *Incorporation doctrine*, Cornell Law School (last updated Oct. 2022), https://www.law.cornell.edu/wex/incorporation_doctrine (last visited Jan. 31, 2024).
[20] Legal Information Institute, *Due process*, Cornell Law School (last updated Oct. 2022), https://www.law.cornell.edu/wex/due_process (last visited Jan. 31, 2024).
[21] National Archives, 14th Amendment to the U.S. Constitution: Civil Rights (1868), *available at* https://www.archives.gov/milestone-documents/14thamendment#:~:text=No%20State%20shall%20make%20or,equal%20protection%20of%20the%20laws (last visited Feb. 2, 2024).
[22] *See Adarand Constructors Inc. v Pena*, 515 U.S. 200 (1995).
[23] Legal Information Institute, *Equal protection*, Cornell Law School (last updated Nov. 2022), https://www.law.cornell.edu/wex/equal_protection (last visited Jan. 31, 2024).
[24] *Id.*

Congressional Accountability Act of 1995

In response to concerns, complaints, and a conception that Congress was unduly and unfairly exempting itself from complying with multiple laws, Congress passed the Congressional Accountability Act (CAA) in 1995.[25] Prior to the CAA's enactment, the federal legislative branch was exempted from several of Congress' laws specifically regarding workplace discrimination and civil rights.[26] The CAA in turn required Congress to comply with these labor laws that already applied to private and other governmental entities; it also established what is now the Office of Congressional Workplace Rights, which checks for compliance with and otherwise enforces the CAA within the federal legislative branch.[27]

For example, prior to the CAA's enactment, the legislative branch was not covered by the Occupational Safety and Health Act (OSH Act) of 1970, despite reported hazardous conditions within Congress' facilities.[28] The OSH Act and 13 other federal laws were made applicable to Congress with the CAA.[29]

Current Congressional Exemptions

Despite the CAA's passage in 1995, there are still laws from which Congress has exempted itself or with which Congress does not fully comply; below are some examples.

Freedom of Information Act of 1967 (FOIA)

The definitions section of FOIA explicitly excludes Congress from the meaning of "agency" as it relates to federal governmental entities who are bound by the disclosure law.[30] There are uncertainties about some forms of communications between applicable agencies and Congress. For example, if "Congress manifested a clear intent to control the document," items sent from Congress to agencies could be exempt from FOIA.[31]

Civil Rights Act of 1964 (CRA)

Title II of the CRA prohibits discriminatory or segregationist access to places of public accommodation, and Title III specifies that such prohibition applies to state and local governments.[32] Given that much of the federal legislative branch's facilities include public

[25] Jay M. Zitter, *Construction and Application of Congressional Accountability Act ("CAA"), 2 U.S.C.A. §§ 1301 to 1438*, 59 A.L.R. Fed. 2d 493 (2011).
[26] *Id.*
[27] *The Congressional Accountability Act*, Office of Congressional Workplace Rights, https://www.ocwr.gov/the-congressional-accountability-act/#:~:text=The%20CAA%20requires%20Congress%20to,%2C%20on% 20January%2023%2C%201996. (last visited Feb. 1, 2024).
[28] James W. Stanley, *Statement on how OSHA would apply to the legislative branch*, OSHA Archive (July 14, 1994), https://www.osha.gov/news/testimonies/07141994 (last visited Feb. 2, 2024).
[29] *Legislative Branch Whistleblowing Fact Sheet*, Office of the Whistleblower Ombud, https://whistleblower.house.gov/sites/evo-subsites/whistleblower.house.gov/files/ Legislative_Branch_Whistleblower_Fact_Sheet.pdf (last visited Feb. 1, 2024).
[30] 5 U.S.C. § 551.
[31] Benjamin M. Barczewski & Meghan M. Stuessy, *Congress and the Freedom of Information Act (FOIA)*, Congressional Research Service (Jan. 9, 2023), https://sgp.fas.org/crs/secrecy/IF12301.pdf (last visited Feb. 1, 2024), citing *ACLU v. CIA*, 823 F.3d 655, 662-63 (D.C. Cir. 2016).
[32] Erika Lovley, *Congress exempt from Civil Rights Act*, Politico (July 17, 2010), https://www.politico.com/story/2010/07/congress-exempt-from-civil-rights-act-039831 (last visited Feb. 2, 2024); Civil Rights Act of 1964.

accommodations, the Office of Congressional Workplace Rights (OCWR) and others have opined that Congress should also be required to comply with these two titles of the CRA.[33]

Americans with Disabilities Act of 1990 (ADA)

Although Congress is currently not exempt from the ADA,[34] Congress has not always complied with the law and still does not have full accessibility for members of the public and of the legislative body and staff.[35]

Whistleblower Protection Act of 1989

Outside of the CAA, there are some protections not guaranteed to federal legislative branch employees for reporting misconduct, such as whistleblower protections.[36] Compared to the U.S. Department of Labor's ability to look into reports and bring suit against an employer, the legislative OCWR has no such authority on behalf of reporting employees and these employees must take care of any lawsuits themselves.[37]

III. Effect of Proposed Changes:

The concurrent resolution is the state's application to Congress under Article V of the U.S. Constitution to call a convention for the sole purpose of considering and proposing a constitutional amendment to prohibit Congress from making any law applying to the citizens of the U.S. that does not also equally apply to all U.S. Representatives and U.S. Senators, and all members of the federal legislative branch.

The concurrent resolution states it is a continuing application until the required two-thirds of the states' legislatures have made similar applications on the same subject, and proposes that other state legislatures similarly apply to Congress to call for a convention regarding such an amendment. The concurrent resolution also provides that the application is revoked and withdrawn, nullified, and superseded as if never passed, retroactive to the date of passage, if the application is used to support calling a convention on any other subject.

The concurrent resolution requires copies of the application to be dispatched to the U.S. President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives,

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[33] *Id.*

[34] *Guide to Disability Rights Laws*, U.S. Department of Justice ADA.gov (last updated Feb. 28, 2020), https://www.ada.gov/resources/disability-rights-guide/#:~:text=about%20this%20topic.-,Americans%20with%20Disabilities%20Act%20(ADA),to%20the%20United%20States%20Congress. (last visited Feb. 1, 2024).

[35] Katherine Tully-McManus, *Congress still playing catch-up on accessibility, despite progress, 30 years after ADA*, Roll Call (July 29, 2020), https://rollcall.com/2020/07/29/congress-still-playing-catch-up-on-accessibility-despite-progress-30-years-after-ada/ (last visited Feb. 1, 2024).

[36] *Legislative Branch Whistleblowing Fact Sheet*, Office of the Whistleblower Ombud, https://whistleblower.house.gov/sites/evo-subsites/whistleblower.house.gov/files/ Legislative_Branch_Whistleblower_Fact_Sheet.pdf (last visited Feb. 1, 2024); *see also* Office of Compliance, Recommendations for Improvements to the Congressional Accountability Act, https://www.ocwr.gov/wp-content/uploads/2011/01/report_section_102_b_112_congress.pdf (last visited Feb. 2, 2024).

[37] Theodoric Meyer, *Do As We Say, Congress Says, Then Does What It Wants*, ProPublica (Jan. 31, 2013), https://www.propublica.org/article/do-as-we-say-congress-says-then-does-what-it-wants (last visited Feb. 1, 2024); *Legislative Branch Whistleblowing Fact Sheet*, Office of the Whistleblower Ombud, https://whistleblower.house.gov/sites/evo-subsites/whistleblower-evo.house.gov/files/Whistleblower_Protection_Act_Fact_Sheet.pdf (last visited Feb. 1, 2024).

each member of the Florida delegation to the U.S. Congress, and the presiding officer of each house of the legislature of each state.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If an Article V amendments convention is called, the state might be responsible for the costs of sending delegates to the convention. Whether Congress or the state would be responsible for related expenses for the convention is not a settled issue at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Senate Rules require that concurrent resolutions be read by title on two separate days before a voice vote is taken on adoption unless the matter is decided otherwise by a two-thirds vote of those Senators present.[38]

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.

[38] Florida Senate Rule 4.13 (adopted Nov. 22, 2022).

FOR CONSIDERATION By the Committee on Fiscal Policy

Senate Concurrent Resolution

A concurrent resolution applying to the Congress of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States stating that the United States Congress shall make no law applying to the citizens of the United States that does not also equally apply to all United States Representatives, United States Senators, and all members of the federal legislative branch.

WHEREAS, one of the fundamental underpinnings of a democracy is the rule of law; and

WHEREAS, in order for the rule of law to be respected and adhered to by the citizenry, it must be applied fairly and in an equal manner; and

WHEREAS, Section One of the Fourteenth Amendment to the United States Constitution reads in part "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."; and

WHEREAS, the United States Supreme Court has held that the Due Process Clause of the Fifth Amendment to the United States Constitution requires equal protection under the laws of the federal government; and

WHEREAS, in spite of the Equal Protection Clause and the Due Process Clause within the Constitution, over time the United States Congress has chosen on a number of occasions to exempt its members and the federal legislative branch from the

requirements of laws it has enacted that apply to all others throughout the United States; and

WHEREAS, the United States Congress acknowledged this issue and decided to address it in part by passing the Congressional Accountability Act of 1995, which applied to Congress and its agencies to adhere to the requirements of several laws that it had previously exempted itself from; and

WHEREAS, at present, Congress and the federal legislative branch remain exempt from the requirements of many laws Congress has passed; and

WHEREAS, having laws passed by the United States Congress apply differently to the general public versus members of Congress and the federal legislative branch is a fundamental unfairness under the rule of law, and violates the spirit of the Constitution's Equal Protection and Due Process Clauses; and

WHEREAS, under Article V of the United States Constitution, on the application of the legislatures of two-thirds of the several states, the Congress shall call a Constitutional Convention for the purpose of proposing amendments, NOW, THEREFORE,

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

That the Legislature of the State of Florida applies to Congress, under Article V of the Constitution of the United States, to call a convention limited to proposing an amendment to the Constitution which would prohibit the United States Congress from making any law applying to the citizens of the United States that does not also equally apply to all United

States Representatives, United States Senators, and all members of the federal legislative branch; and

That this application constitutes a continuing application in accordance with Article V until the legislatures of at least two-thirds of the states have made applications on the same subject.

BE IT FURTHER RESOLVED that this Legislature also proposes that the legislatures of the states comprising the United States apply to the Congress to call a constitutional convention for proposing such an amendment to the Constitution.

BE IT FURTHER RESOLVED that this concurrent resolution is revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the Constitution of the United States with any agenda other than to propose an amendment to the Constitution which would prohibit the United States Congress from making any law applying to the citizens of the United States that does not also equally apply to all United States Representatives, United States Senators, and all members of the federal legislative branch.

BE IT FURTHER RESOLVED that copies of this application be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, and to the presiding officer of each house of the legislature of each state.

The Florida Senate

APPEARANCE RECORD

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

February 15, 2024
Meeting Date

Fiscal Policy
Committee

7066
Bill Number or Topic

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Phone 850-425-1344

Address 104 S. Monroe Street
Street

Email TcgLobby@aol.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

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Common Cause Florida

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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 Fiscal Policy

BILL:	CS/HB 1
INTRODUCER:	Fiscal Policy Committee; Judiciary Committee and Representatives Sirois, McFarland, Rayner and others
SUBJECT:	Social Media Use for Minors
DATE:	February 13, 2024 REVISED: 2/16/24

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Yeatman	FP	**Fav/1 amendment**
2.				

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

CS/HB 1 requires social media platforms that are regulated by the bill to perform reasonable age verification before permitting users to access their platforms. These platforms regulated by the bill are distinguishable from unregulated platforms primarily due to their:

- Use of addictive, harmful, or deceptive design features, or any other feature that is designed to cause an account holder to have an excessive or compulsive need to use or engage with the social media platform.
- Allowance of the use of information derived from the social media platform's tracking of the activity of an account holder to control or target at least part of the content offered to the account holder.

The age verification method used must be conducted by a nongovernmental, independent, and U.S.-based third party that is not affiliated with the social media platform.

The bill requires social media platforms to prohibit minors younger than 16 years of age from entering into contracts with them to become account holders. With respect to existing accounts belonging to minors younger than 16, the bill requires social media platforms to terminate them, and also allows the account holders or their parents or guardians to terminate them. Social media platforms must permanently delete all personal information held by them relating to terminated accounts unless otherwise required by law to maintain the personal information.

Minors who are 16 or 17 years of age are allowed to create and maintain accounts, but social media platforms are required to provide them certain disclosures, disclaimers, and other information identified in the bill.

The bill does not apply to certain websites identified in the bill, including those whose predominant function is electronic mail, messaging, or texts; streaming services; news, sports, or entertainment; or online shopping or gaming.

Any violation of the bill's regulations is deemed to be an unfair and deceptive trade practice, actionable only by the Department of Legal Affairs under the Florida Deceptive and Unfair Trade Practices Act. The bill also provides a private cause of action against social media platforms for failing to timely delete the account of a minor younger than 16 years of age after receiving a request to delete the account.

The bill authorizes the department to adopt rules to implement the bill.

The bill takes effect on July 1, 2024.

II. Present Situation:

Social Media Platforms

The term "social media" includes "forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, videos, personal messages, and other content."[1] Today, an estimated 4.9 billion people use social media across the world.[2] In 2005, the year Facebook started, just 5 percent of American adults used social media platforms. By 2011, that share had risen to half of all Americans; and by 2021, 72 percent of the public used some type of social media.[3]

Approximately 38 percent of children between the ages of 8 and 12, and 84 percent of teenagers between the ages of 13 and 18, are using social media.[4] More than one in three teens, ages 13 to 17, report that they use social media "almost constantly."[5] To comply with federal requirements, some social media companies already prohibit kids younger than 13 from creating accounts on their platforms, but children can easily get around such bans, regardless of whether they have their parents' consent.[6]

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[1] Meriam-Webster, *Dictionary, Definition: Social Media,* https://www.merriam-webster.com/dictionary/social%20media (last visited Jan. 17, 2024).
[2] Belle Wong, *Top Social Media Statistics And Trends Of 2024,* Forbes Advisor, May 18, 2023, https://www.forbes.com/advisor/business/social-media-statistics/.
[3] Pew Research Center, *Social Media Fact Sheet,* Apr. 7, 2021, https://www.pewresearch.org/internet/fact-sheet/social-media/.
[4] Shiv Sudhakar, *Age 13 and younger is 'too early' for kids to be on social media, surgeon general admits,* Fox News, Feb. 10, 2023, https://www.foxnews.com/lifestyle/age-13-too-early-kids-social-media-surgeon-general.
[5] The Annie E. Casey Foundation, *Social Media's Concerning Effect on Teen Mental Health,* Aug. 10, 2023, https://www.aecf.org/blog/social-medias-concerning-effect-on-teen-mental-health#:~:text=Numerous%20studies%20show%20that%20higher,poor%20body%20image%2C%20eating%20disorder.
[6] Barbara Ortutay, *Car seats and baby formula are regulated. Is social media next?,* The Associated Press, May, 23, 2023, https://apnews.com/article/surgeon-general-kids-social-media-teens-tiktok-instagram-443530d9baa3f91386bf9fbfb313bbaf.

In less than a generation, social media has evolved from a direct electronic information exchange to a virtual gathering place, retail platform, and marketing tool. What began as a desktop or laptop experience has largely shifted to mobile phones and tablets. With the advent of social media apps that run on smartphones, end users can now take their communities with them wherever they go and use social media at any time.[7]

Addictive Designs and Deceptive Patterns

In general, "addictive designs" or "deceptive patterns," also called "dark patterns," are deceptive user experiences that take advantage of how people habitually use websites, to get them to do things that they may not normally do, such as impulse purchasing, giving away personal information, or spending excessive time on websites.[8] Examples of dark patterns include "autoplay," when a video website automatically plays new videos in succession as a default setting;[9] and "infinite scroll," when a website allows users to scroll endlessly through content, rather than clicking through pages.[10]

In 2022, the Federal Trade Commission issued a report outlining the ways that companies are increasingly using dark patterns to manipulate consumers into buying products or forfeiting their privacy.[11] Common dark pattern tactics include:

- Disguising ads by designing advertisements to look like independent editorial content.
- Claiming to be neutral, but actually ranking companies in exchange for compensation.
- Using countdown timers designed to make consumers believe they only have a limited time to purchase a product or service, even though the offer is not actually time-limited.
- Making it difficult to cancel subscriptions or charges, which involves tricking someone into paying for goods or services without consent.
- Burying key terms and junk fees, which involves hiding or obscuring material information from consumers that they do not see before making a purchase.
- Tricking consumers into sharing data, which involves falsely giving consumers choices about privacy settings or sharing data, but instead steering them toward the option that gives away the most personal information.[12]

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[7] Maryville University, *The Evolution of Social Media: How Did It Begin, and Where Could It Go Next?,* May 28, 2020, https://online.maryville.edu/blog/evolution-social-media/.
[8] Brad Bartlett, *Dark Design Patterns: Teach Kids to Recognise Them,* Kidslox, Feb. 7, 2023, https://kidslox.com/guide-to/dark-design-patterns/.
[9] René Otto, *Autoplay and infinite scroll,* Medium, Jan. 26, 2021, https://rene-otto.medium.com/autoplay-and-infinite-scroll-8607abe52bb7#:~:text=nobody%20asked%20for%20autoplay%20video,%3A%20stealing%20your%20attention%20back.%E2%80%9D.
[10] Erin Rupp, *The Infinite Scroll: Why It's So Addictive and How to Break Free,* Freedom.to, Feb. 28, 2022, https://freedom.to/blog/infinite-scroll/.
[11] Federal Trade Commission (FTC), *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers,* Sep. 15, 2022, https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers.
[12] *Id.*

Recently, the commission has filed complaints against several companies for using dark patterns as a deceptive trade practice.[13] For example, it has taken action against Twitter (now X), alleging it deceptively used account security information to sell targeted advertisements.[14] Additionally, the commission filed a complaint against Amazon, alleging the use of dark patterns to deceive users into subscribing to a premium service.[15] Both cases are still pending.

Effects on Children

Social media has become an important aspect of the digital interactions of minors, who use social media for entertainment and communication purposes.[16] Adolescents are constantly in touch with their peers via social media accounts. However, social media has the potential to have both positive and negative effects on their health.[17] Some 80 percent of teenagers say social media allows them to feel more connected to their peers, according to a 2022 Pew Research Center survey of U.S. teens ages 13 to 17. Overall, one in three said that social media has had a mostly positive effect on them, while 59 percent said that it had neither a positive nor a negative effect.[18] On the other hand, many teens' use, and overuse, of social media has raised questions about its effect on their physical and mental health by distracting them, disrupting their sleep, and exposing them to bullying, rumor spreading, unrealistic views of other people's lives, and peer pressure.[19]

In May 2023, U.S. Surgeon General Dr. Vivek Murthy released an advisory to call attention to the effects of social media on youth mental health. The advisory noted that at crucial periods of adolescent brain development, social media use is predictive of decreases in life satisfaction, as well as additional concerns around body image, sleep issues, and much more.[20] He also concluded that 13 years old is "too early" for children to use social media, despite most social media companies allowing 13-year-olds to use their platforms, because in early adolescence, kids are still "developing their identity, their sense of self."[21]

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[13] Frank Gorman et al., *FTC Targets "Dark Patterns" in Actions Against Amazon and Publishers Clearing House,* WilmerHale, Aug. 14, 2023, https://www.wilmerhale.com/insights/client-alerts/20230814-ftc-targets-dark-patterns-inactions-against-amazon-and-publishers-clearing-house.

[14] FTC, *FTC Charges Twitter with Deceptively Using Account Security Data to Sell Targeted Ads,* May 25, 2022, https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-charges-twitter-deceptively-using-account-security-data-sell-targeted-ads.

[15] FTC, *FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel,* Jun. 21, 2023, https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their.

[16] Andrea Irmer & Florian Schmiedek, *Associations between youth's daily social media use and well-being are mediated by upward comparisons,* 1 COMMUN. PSYCHOL. 12 (Aug. 22, 2023), available at https://doi.org/10.1038/s44271-023-00013-0.

[17] Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps,* Investopedia.com, Aug. 31, 2023, https://www.investopedia.com/terms/s/social-media.asp.

[18] Monica Anderson et al., *Connection, Creativity, and Drama: Teen Life on Social Media in 2022,* Pew Research Center, Nov. 16, 2022, https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/.

[19] Mayo Clinic, *Tween and teen health,* https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437 (last visited Jan. 17, 2024).

[20] U.S. Department of Health and Human Services, Office of the Surgeon General, *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* (2023), available at https://www.ncbi.nlm.nih.gov/books/NBK594761/.

[21] Lauraine Langreo, *Surgeon General: Kids Under 14 Should Not Use Social Media,* EducationWeek, Feb. 2, 2023, https://www.edweek.org/leadership/surgeon-general-kids-under-14-should-not-use-social-media/2023/02.

Other experts, such as David Greenfield, a psychologist, agree and assert the platforms lure users with powerful tactics. One such tactic is "intermittent reinforcement," which refers to a reward scheme in which the user receives rewards inconsistently and unpredictably. While adults are susceptible, young people are particularly at risk because the brain regions that are involved in resisting temptation and reward are not nearly as developed in children and teenagers as in adults.[22]

Based on their preparation and review of studies and other scientific research, many experts have called for the regulation of social media, and specifically, regulation of the use of social media by children. Dr. Mary Alvord, a member of the American Psychological Association social media advisory panel, has stated that just because social media is here to stay, it does not mean the dangers have to be accepted. "Just as we decide when kids are old enough to drive, and we teach them to be good drivers, we can establish guidelines and teach children to use social media safely." [23]

Safety Measures and Parental Controls

Providing children with information regarding how to more safely use social media could reduce or eliminate harms. Having conversations with them about social media, its benefits, and its risks, could promote positive social media usage.[24] Parental controls can also protect children from inappropriate content, cyberbullying, and other online safety issues.[25] Examples of parental controls include blocking websites, filtering content, imposing limits on screen time, allowing parents to monitor online activity, using location tracking, and disabling Wi-Fi.[26]

However, two 2018 studies found that parental control apps may actually be counterproductive because they harm the trust between a parent and child and reduce the child's ability to respond to online threats. In one of the studies, children believed that the apps were overly restrictive and prevented them from doing everyday tasks, such as homework assignments. Additionally, a researcher stated that "parental involvement and direct supervision were both associated with fewer peer problems and less online victimization for teens, but neither of these factors correlated with the use of parental control apps."[27]

Lawsuits

Evidence exists that social media platforms have intentionally created algorithms and other functions that are deliberately designed to hold users' attention as long as possible, tapping into psychological biases and vulnerabilities relating to the human desire for validation and fear of

[22] Matt Richtel, *Is Social Media Addictive? Here's What the Science Says.*, The New York Times, Oct. 25, 2023, https://www.nytimes.com/2023/10/25/health/social-media-addiction.html.
[23] Kirsten Weir, *Social media brings benefits and risks to teens. Here's how psychology can help identify a path forward,* American Psychological Association, Sept. 1, 2023, https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media.
[24] WebMD Editorial Contributors, *How to Talk to Your Kids About Social Media*, WebMD.com, https://www.webmd.com/parenting/how-to-talk-to-kids-about-social-media (last visited Jan. 17, 2024).
[25] Internetmatters.org, *Parental Controls*, https://www.internetmatters.org/parental-controls/ (last visited Jan. 17, 2024).
[26] Caroline Knorr, *Parents' Ultimate Guide to Parental Controls,* Commonsensemedia.org, Mar. 9, 2021, https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-parental-controls.
[27] Barbara Abney & Zenaida Kotala, *Apps to Keep Children Safe Online May be Counterproductive,* UCF Today, Apr. 2, 2018, https://www.ucf.edu/news/apps-keep-children-safe-online-may-counterproductive/.

rejection. The platforms continue to use these algorithms and functions even though they are aware that too much passive use of social media can be unhealthy.[28]

On October 24, 2023, a group of 41 states, including Florida, and the District of Columbia, filed suit against Meta,[29] contending that the company knowingly uses features on its platforms to cause children to use them compulsively, even as the company says that its social media sites are safe for young people.[30] The complaint alleges that Meta took actions which qualify as a deceptive or unfair trade practice and which violate the federal Children's Online Privacy Protection Act.[31]
The complaint also alleges that "Meta has harnessed powerful and unprecedented technologies to entice, engage and ultimately ensnare youth and teens." Its motive is profit, and "in seeking to maximize its financial gains, Meta has repeatedly misled the public about the substantial dangers of its Social Media Platforms" and "has concealed the ways in which these Platforms exploit and manipulate its most vulnerable consumers: teenagers and children."[32]

Regarding the motivation for the suit, Florida Attorney General Ashley Moody stated that "Meta has gone unchecked for too long, and our children are suffering the consequences of these unlawful practices . . . . I took action to stop Meta from targeting minors with addictive features to keep them online for hours, collecting their data and other unlawful actions that harm teens' mental health,"[33] and "[i]t's no surprise to parents that children cannot stay off their phones. This has been shown to be very addictive to children across the United States. It's caused mental health problems and sleep problems."[34]

Additionally, New York Attorney General Letitia James stated "Meta has profited from children's pain by intentionally designing its platforms with manipulative features that make children addicted to their platforms while lowering their self-esteem. Social media companies, including Meta, have contributed to a national youth mental health crisis and they must be held

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[28] R. Kraut et al., *Internet paradox: a social technology that reduces social involvement and psychological well-being?,* 53 AM. PSYCHOL. 9, at 1017-31 (Sept. 1998), available at https://pubmed.ncbi.nlm.nih.gov/9841579/ (finding that greater use of the Internet was associated with declines in participants' communication with family members in the household, declines in the size of their social circle, and increases in their depression and loneliness).
[29] *State of Florida v. Meta Platforms, Inc., Instagram, LLC,* Case No. 8:23-cv-02412 (M.D. Fla.); *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al,* Case No. 4:23-cv-05448 (N.D. Cal.). The cases have merged, and are still pending.
[30] *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al,* Case No. 4:23-cv-05448 (N.D. Cal.); Matt Richtel, *Is Social Media Addictive? Here's What the Science Says*., The New York Times, Oct. 25, 2023, https://www.nytimes.com/2023/10/25/health/social-media-addiction.html.
[31] *See generally* Complaint, *State of Florida v. Meta Platforms, Inc., Instagram, LLC,* Case No. 8:23-cv-02412 (M.D. Fla.), available at https://www.myfloridalegal.com/sites/default/files/2023-10/oag-v.-meta.pdf; *see also* Complaint, *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al,* Case No. 4:23-cv-05448 (N.D. Cal.), available at https://www.washingtonpost.com/documents/b68f2951-2a4b-4822-b0fb-04238703c039.pdf?itid=lk_inline_manual_5.
[32] Complaint ¶ 1, *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al,* Case No. 4:23-cv-05448 (N.D. Cal. Oct. 24, 2023), available at https://www.washingtonpost.com/documents/b68f2951-2a4b-4822-b0fb-04238703c039.pdf?itid=lk_inline_manual_5.
[33] Press Release, Office of Attorney General Ashley Moody, *Attorney General Moody Takes Legal Action Against Meta to Protect Children,* Oct. 24, 2023, https://www.myfloridalegal.com/newsrelease/attorney-general-moody-takes-legal-action-against-meta-protect-children.
[34] CBS, *Florida Attorney General Ashley Moody targets Meta over negative impacts on kids,* Oct. 25, 2023, https://www.cbsnews.com/miami/news/florida-attorney-general-ashley-moody-targets-meta-negative-impacts-kids/.

accountable."[35]

Social Media Laws for Children

State Requirements for Social Media and Phones in Schools

State law requires students in grades 6 through 12 to receive instruction on the social, emotional, and physical effects of social media. The instructional materials must be available online, and district school boards must notify parents of the material's availability.[36]

State law also prohibits students from using wireless communication devices at school during instructional time, except when expressly directed by a teacher solely for educational purposes, and requires a teacher to designate an area for wireless communications devices during instructional time.[37]

State Protection of Children in Online Spaces Act

State law provides that any online service, product, game, or feature likely to be predominantly accessed by children under 18 years of age may not, except under certain situations:

- Process the personal information of any child if the platform has actual knowledge or willfully disregards that the processing may result in substantial harm or privacy risk to children.
- Profile a child.
- Collect, sell, share, or retain any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged.
- Use a child's personal information for any unstated reason.
- Collect, sell, or share any precise geolocation of data of children.
- Use dark patterns to:
  - Lead or encourage children to provide personal information beyond what personal information would otherwise be reasonably expected to be provided for that online service, product, game or feature.
  - Forego privacy protections.
  - Take any action that the online platform has actual knowledge of or willfully disregards that may result in substantial harm or privacy risk to children.
- Use collected information to estimate age or age range for any other purpose or retain that personal information longer than necessary to estimate age.[38]

[35] Press Release, New York State Attorney General, *Attorney General James and Multistate Coalition Sue Meta for Harming Youth*, Oct. 24, 2023, https://ag.ny.gov/press-release/2023/attorney-general-james-and-multistate-coalition-sue-meta-harming-youth.
[36] Section 1003.42(2)(o)5., F.S.
[37] Sections 1006.07(2)(f) and 1003.32(1)(a), F.S.
[38] Section 501.1735, F.S.

Social Media Laws for Children in Other States

In March 2023, Utah became the first state to adopt laws regulating minors' access to social media.[39] Louisiana, Texas, Arkansas, and Ohio soon followed.[40] Connecticut and Ohio, have introduced similar bills.[41]

According to the Utah law, effective March 1, 2024, a social media company must:[42]

- Verify the age of a Utah resident seeking to maintain or open an account.
- Obtain parental consent before minors under 18 can open or maintain their current account.
- Deny access to existing users who do not verify their age within 14 days after attempting to access their account.
- Give a minor's parents or guardians access to all posts, messages, and responses.
- Not display advertising to minors.
- Not allow minors to engage in direct messaging to individuals outside their platform friend group.
- Prohibit minors from accessing their accounts between 10:30 p.m. and 6:30 a.m.

The law has recently been challenged on First Amendment grounds.[43] NetChoice, LLC, an Internet trade association whose members include Facebook, Instagram, Twitter, TikTok, Snapchat, Pinterest, and Nextdoor, claims the provisions amount to an "unconstitutional attempt to regulate both minors' and adults' access to – and ability to engage in – protected expression." The case is still pending.[44]

A case challenging a similar law in Arkansas resulted in the law being preliminarily enjoined, meaning it is not in effect, pending an appeal.[45] The court found that the law placed too high a burden on adults and children attempting to access protected content, and was impermissibly vague as to whom it applies.[46]

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[39] *See* ch. 498, Laws of Utah (2023), codifying UTAH CODE s. 13-63.
[40] Act No. 440 (H.B. 61), Laws of La. (2023), codifying LSA-R.S. 9:2717.1; Tex. H.B. 18 (2023), codifying TEX. BUS. & COMM. CODE ss. 509.001 et seq.; Ark. Acts 689 (S.B. 396) (2023), codifying ARK. CODE ss. 4-88.1101 et seq.; Ohio H.B. 33 (2023), codifying OHIO REV. CODE ss. 1349.09 et seq.
[41] Lisa Thomas et al., *The Beehive State Joins the Buzz Around Minors and Social Media*, Dec. 26, 2023, https://www.natlawreview.com/article/beehive-state-joins-buzz-around-minors-and-social-media.
[42] *Id.*
[43] *NetChoice, LLC v. Reyes*, Case No. 2:23-cv-00911 (D. Utah December 18, 2023).
[44] Complaint ¶ 2, *NetChoice, LLC v. Reyes*, Case No. 2:23-cv-00911 (D. Utah December 18, 2023), available at https://netchoice.org/wp-content/uploads/2023/12/NetChoice-v-Reyes_Official-Complaint_FINAL-Filed.pdf; *see also* Mack Degeurin, *Tech trade group sues over 'unconstitutional' Utah teen social media curfew law,* Popular Science, Dec. 20, 2023, https://www.popsci.com/technology/lawsuit-utah-teen-social-media-curfew/.
[45] *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark. Aug. 31, 2023).
[46] *Id.*

Child-Focused Online Privacy Laws

Federal Children's Online Privacy Protection Act (COPPA)

COPPA,[47] and its related rules,[48] regulate websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.[49]

For purposes of COPPA, children are individuals under the age of 13.[50] A covered entity may not collect personal information from a child under the age of 13 without the prior, verifiable consent of his or her parent.[51]

COPPA defines personal information as individually identifiable information about an individual that is collected online, including:[52]

- First and last name.
- A home or other physical address including street name and name of a city or town.
- Online contact information.
- A screen or user name that functions as online contact information.
- A telephone number.
- A social security number.
- A persistent identifier that can be used to recognize a user over time and across different websites or online services.
- A photograph, video, or audio file, where such file contains a child's image or voice.
- Geolocation information sufficient to identify street name and name of a city or town.
- Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above.[53]

Operators covered by the rule must:[54]

- Post a clear and comprehensive online privacy policy describing their information practices for personal information collected online from children.
- Provide direct notice to parents and obtain verifiable parental consent, with limited exceptions, before collecting personal information online from children.
- Give parents the choice of consenting to the operator's collection and internal use of a child's information, but prohibiting the operator from disclosing that information to third parties (unless disclosure is integral to the site or service, in which case, this must be made clear to parents).

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[47] 15 U.S.C. ss. 6501-6505.
[48] 16 C.F.R. pt. 312.
[49] Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions (last visited Jan. 18, 2024).
[50] *Id.*
[51] 15 U.S.C. §§ 6502(a)-(b).
[52] Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions (last visited Jan. 18, 2024).
[53] *Id.*
[54] *Id.*

- Provide parents access to their child's personal information to review or have the information deleted.
- Give parents the opportunity to prevent further use or online collection of a child's personal information.
- Maintain the confidentiality, security, and integrity of information they collect from children, including by taking reasonable steps to release such information only to parties capable of maintaining its confidentiality and security.
- Retain personal information collected online from a child for only as long as is necessary to fulfill the purpose for which it was collected and delete the information using reasonable measures to protect against its unauthorized access or use.
- Not condition a child's participation in an online activity on the child providing more information than is reasonably necessary to participate in that activity.[55]

Violations of COPPA are deemed an unfair or deceptive act or practice and are therefore prosecuted by the Federal Trade Commission.[56] While there is no criminal prosecution or private right of action under COPPA, the act authorizes state attorneys general to enforce violations that affect residents of their states.[57]

In 2019, Google and its subsidiary YouTube agreed to pay a $170 million settlement for lawsuits brought by the commission and the state of New York for violations of COPPA for collecting personal information from children without consent. Specifically, it was alleged that YouTube tracked cookies[58] from viewers of child-directed channels, without first notifying parents and obtaining their consent. YouTube earned millions of dollars by using the identifiers to deliver targeted ads to viewers of these channels.[59]

California Age-Appropriate Design Code Act

In 2022, California passed a combination social media and data privacy law that prohibits social media platforms from showing children advertising. California adopted the California Age-Appropriate Design Code Act (CAADCA)[60] legislation modeled on the United Kingdom's Age Appropriate Design Code,[61] which requires online platforms to adhere to strict default privacy

[55] *Id.*
[56] *See id.; see also* 15 U.S.C. s. 6502(c); 16 C.F.R. s. 312.9.
[57] *See* Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions (last visited Jan. 18, 2024).
[58] Cookies are bits of data that are sent to and from a user's browser to identify the user. When the user opens a website, the user's browser sends a piece of data to the web server hosting that website. This data usually appears as strings of numbers and letters in a text file. Every time the user accesses a website, a cookie is created and placed in a temporary folder on the user's device. From here, cookies try to match the user's preferences for what the user wants to read, see, or purchase. Microsoft, *Everything you need to know about Internet cookies,* Apr. 25, 2023, https://www.microsoft.com/en-us/edge/learning-center/what-are-cookies?form=MA13I2.
[59] Federal Trade Commission, *Google and YouTube Will Pay Record $170 Million for Alleged Violations of Children's Privacy Law,* Sep. 4, 2019, https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations-childrens-privacy-law.
[60] CAL. CIVIL CODE § 1798.99.28-.35.
[61] 5Rights Foundation, *California follows UK lead as child data protection law is passed,* Aug. 30, 2022, https://5rightsfoundation.com/in-action/california-follows-uk-lead-as-child-data-protection-law-is-passed.html.

and safety settings that protect the best interest of children.[62] CAADCA covers children under 18 years of age and will be effective July 1, 2024.[63]

More specifically, CAADCA requires certain businesses that provide an online service, product, or feature that is likely to be accessed by children to comply with several new requirements and restrictions, including prohibitions on using:

- Personal information of any child in a way that it knows or has reason to know is materially detrimental to a child's physical or mental health or wellbeing.
- Dark patterns to manipulate children into providing unnecessary personal information.[64]

The law has recently been challenged on several grounds, including on First Amendment and Supremacy Clause grounds, and has been preliminarily enjoined.[65] A similar law has since been adopted in Utah.[66]

European Union - Social Media and Data Privacy Laws for Children

In 2015, the European Union (E.U.) passed a law to require member states to require parental consent for a child to access social media. The E.U. mandates that at a minimum, such parental consent requirements apply to children 13 years of age or younger, and may apply to children 16 years of age or younger.[67]

Additionally, in 2023, the E.U. passed the Digital Services Act (DSA), which became effective on January 1, 2024 and currently applies to 19 of the largest Internet companies, including Meta, Apple, TikTok, and Google. The DSA requires, in part, such companies to prevent harmful content from spreading on their platforms and to share certain internal data with regulators and associated researchers.[68] It also compels them to set up new policies and procedures to remove flagged hate speech, terrorist propaganda, and other material defined as illegal by countries within the E.U.[69]

Age Verification Mechanisms

Many industries are currently required to use online age verification methods, including:

- Alcohol and tobacco.[70]

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[62] Press Release, Office of Governor Gavin Newsome, *Governor Newsom Signs First-in-Nation Bill Protecting Children's Online Data and Privacy*, Sept. 15, 2022, https://www.gov.ca.gov/2022/09/15/governor-newsom-signs-first-in-nation-bill-protecting-childrens-online-data-and-privacy/.
[63] CAL. CIVIL CODE § 1798.99.28-.35.
[64] Briana Kelly, Nelson Mullins Riley & Scarborough LLP, *State of California Passes Bill to Protect Children Online*, Jan. 26, 2023, https://www.lexology.com/library/detail.aspx?g=e4c49600-b850-4d8f-a68a-117acf89972f.
[65] *NetChoice, LLC v. Bonta*, 2023 WL 6135551 (N.D. Cal 2023).
[66] Ch. 477, Laws of Utah (2023), codifying amendments to UTAH CODE s. 13-63.
[67] Diana Graber, *Europeans Teach Us a Lesson About Banning Teens From Social Media*, HuffPost, Dec. 21, 2015, https://www.huffpost.com/entry/europeans-teach-us-a-less_b_8854802.
[68] Martin Coulter, *Big Tech braces for EU Digital Services Act regulations*, Reuters, Aug. 24, 2023, https://www.reuters.com/technology/big-tech-braces-roll-out-eus-digital-services-act-2023-08-24/.
[69] Adam Satariano, *E.U. Takes Aim at Social Media's Harms With Landmark New Law,* The New York Times, Apr. 22, 2022, https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html.
[70] The U.S. Food and Drug Administration (FDA) recommends using independent, third -party age- and identity-verification services that compare customer information against third-party data sources for online sellers of tobacco. FDA, *Enforcement*

- Gambling.
- Adult websites.
- Firearms.[71]

Adult websites in the U.S. generally use checkboxes for users to confirm that they are at least 18 years of age. Recently, however, several states and the United Kingdom have enacted laws requiring adult websites to use age verification measures to block adult content from being accessed by minors.[72]

Additionally, some social media platforms ask for age-identifying information to create new accounts, but such information is not always verified. For example, Facebook requires new users to self-report a birthdate to confirm that they are at least 13 years old. Meta is currently testing new ways to verify age, including through the use of biometrics and online interviews.[73]

There are several ways that Internet companies can verify, or attempt to verify, age. Options include using:[74]

- Government identity documents, which generally require users to submit government documents to a third-party company for review.
- Phone records, which generally check users' phones for parental controls.
- Credit score databases, which generally require the user to enter identifying information that is subsequently confirmed through a credit check agency.
- Biometric age estimation, which generally requires a facial analysis to estimate age.
- Credit cards, which generally requires users to supply credit card information for validation.
- Open banking, which generally requires users to log into their own online banking system and give approval for date of birth information to be supplied to a bank-approved, third-party age verification provider.
- Algorithmic profiling, which generally assesses the likely ages of users based on their online behavior.
- Self-declaration, which generally requires users to check a box or enter a birthdate.
- Zero knowledge proofs, which generally enables users to upload identity documents to privacy servers and securely share encrypted, anonymous "proofs" of age to a company, through a process called "hashing," without actually transmitting the identity documents to the company.[75]

Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised) (April 2020), at 7, available at https://www.fda.gov/media/133880/download.

[71] Jan Stepnov, *What Is an Age Verification System and Why Incorporate It Into Your Business,* Regula, Apr. 21, 2023, https://regulaforensics.com/blog/age-verification-system/.

[72] Masha Borak, *UK introduces Online Safety Bill mandating age verification,* Oct. 27, 2023, https://www.biometricupdate.com/202310/uk-introduces-online-safety-bill-mandating-age-verification; Dmytro Sashchuk, *Age verification regulations in the United States of America,* Veriff, Nov. 15, 2023, https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america.

[73] Meta, *Introducing New Ways to Verify Age on Instagram,* Jun. 23, 2022, https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/.

[74] The Age Verification Providers Association, *How do you check age online?*, https://avpassociation.com/avmethods/ (last visited Jan. 18, 2024).

[75] Bessie Liu, *Aleo blockchain adds zPass, a ZK protocol for verifying identities,* Blockworks, Oct. 26, 2023, https://blockworks.co/news/zkdecentralized-identity-verification.

When verifying age online, people usually share personal information, including:

- Full name and location.
- Email or phone number (when using two-factor authorization).
- Home address.

Identity theft is a potential risk when users reveal this information, and websites can collect information revealed through age verification processes, and combine it with other data for targeted advertisements or data-sharing with third parties.[76]

However, there are numerous minimally invasive verification techniques that do not require sharing any age verification information with social media platforms. For example, a trusted third-party could verify the age of a user, and provide a QR code or similar device, to an age-restricted website, thereby establishing the user's age without the platform ever seeing the age verification documents or the user's identity.[77] Experts assert that age verification systems have progressed considerably from a generation ago.[78]

Age fabrication is also a widespread issue. For example, underage customers in the U.S. consumed 11.73 percent of all alcoholic drinks sold in the U.S. market in 2016, and 49.8 percent of tobacco and vape shops in California failed to check the identification of underage decoys in 2018.[79]

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.[80] FDUTPA was modeled after the Federal Trade Commission Act.[81]

The Department of Legal Affairs or the state attorney's office in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.[82] The state attorney's office may enforce violations of FDUTPA if the violations take place within its jurisdiction. The department has enforcement authority when: the violation is multi-jurisdictional; the state attorney defers to the department in

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[76] John Reynolds, *Don't risk identity fraud just to play that video game – do this instead,* Aleo, Dec. 28, 2023, https://aleo.org/post/dont-risk-identity-fraud-to-play-that-video-game/.
[77] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation,* Aug. 7, 2023, https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation.
[78] Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, https://broadbandbreakfast.com/2023/11/improved-age-verification-allows-states-to-consider-restricting-social-media/.
[79] Persona, *Age verification system: How to add it into your business,* https://withpersona.com/blog/incorporate-age-verification-intobusiness (last visited Jan. 18, 2024).
[80] Section 501.202, F.S.
[81] *See* 15 U.S.C. s. 45; *see also* D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act,* 65 U. MIAMI L. REV. 1083 (Summer 2011).
[82] Sections 501.203(2) and 501.207(1)(c) and (2), F.S.; *see also* David J. Federbush, *FDUTPA for Civil Antitrust Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution,* 76 FLA. BAR J. 52 (Dec. 2002), available at https://www.floridabar.org/the-florida-bar-journal/fdutpa-for-civil-antitrust-additional-conduct-party-and-geographic-coverage-state-actions-for-consumer-restitution/ (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida).

writing; or the state attorney fails to act within 90 days after a written complaint is filed.[83] In certain circumstances, consumers may also file suit through private actions.[84]

The department and the state attorney's office have powers to investigate FDUTPA claims, which include:[85]

- Administering oaths and affirmations.
- Subpoenaing witnesses or matter.
- Collecting evidence.

The department and the state attorney's office may seek the following remedies:[86]

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to $10,000 per willful violation.

FDUTPA may not be applied to certain entities in certain circumstances, including:[87]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services.
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

III. Effect of Proposed Changes:

The bill creates s. 501.1736, F.S., entitled "Social media use for minors."

Definitions

The bill defines the following terms as used in the bill:

- "Account holder" means a resident of this state who opens an account or creates a profile or is permitted to use any other form of identification to use or access a social media platform.
- "Department" means the Department of Legal Affairs.
- "Reasonable age verification method" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.

Additionally, the bill defines "Social media platform" to mean an online forum, website, or application offered by an entity that does all of the following:

- Allows the social media platform to track the activity of the account holder.
- Allows an account holder to upload content or view the content or activity of other account holders.

[83] Section 501.203(2), F.S.
[84] Section 501.211, F.S.
[85] Section 501.206(1), F.S.
[86] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.
[87] Section 501.212(4), F.S.

- Allows an account holder to interact with or track other account holders.
- Utilizes addictive, harmful, or deceptive design features, or any other feature that is designed to cause an account holder to have an excessive or compulsive need to use or engage with the social media platform.
- Allows the utilization of information derived from the social media platform's tracking of the activity of an account holder to control or target at least part of the content offered to the account holder.

However, the term "social media platform" does not include an online service, website, or application where the predominant or exclusive function is:

- Electronic mail.
- Direct messaging consisting of text, photos, or videos that are sent between devices by electronic means where messages are shared between the sender and the recipient only, visible to the sender and the recipient, and are not posted publicly.
- A streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service.
- News, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided incidental to, directly related to, or dependent upon provision of the content.
- Online shopping or e-commerce, if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews or display lists or collections of goods for sale or wish lists, or other functions that are focused on online shopping or e-commerce rather than interaction between users or account holders.
- Interactive gaming, virtual gaming, or an online service, that allows the creation and uploading of content for the purpose of interactive gaming, edutainment, or associated entertainment, and the communication related to that content.
- Photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting.
- A professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic.
- Single-purpose community groups for public safety if the interaction with other users or account holders is generally limited to that single purpose and the community group has guidelines or policies against illegal content.
- The provision of career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services.
- Business to business software.
- A teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real-time communication.
- Shared document collaboration.
- Cloud computing services, which may include cloud storage and shared document collaboration.
- The provision of access to or interactions with data visualization platforms, libraries, or hubs.
- The enabling of comments on a digital news website, if the news content is posted only by the provider of the digital news website.
- The provision of technical support for a platform, product, or service.

- Academic, scholarly, or genealogical research where the majority of the content that is posted or created is posted or created by the provider of the online service, website, or application and the ability to chat, comment, or interact with other users is directly related to the provider's content.
- A classified ad service that only permits the sale of goods and prohibits the solicitation of personal services or that is used by and under the direction of an educational entity, including:
  - A learning management system.
  - A student engagement program.
  - A subject or skill-specific program.

Reasonable Age Verification Requirement

The bill requires social media platforms to:
- Prohibit minors who are younger than 16 years of age from entering into a contract with a regulated social media platform to become an account holder.
- Use reasonable age verification methods to verify the age of each account holder on the regulated social media platform at the time a new account is created.

If an account holder fails to verify his or her age, the social media platform must deny the account. The reasonable age verification method must be conducted by a nongovernmental, independent, third party that is not affiliated with the social media platform.

Additionally, personal identifying information used to verify age may not be retained once the age of an account holder or a person seeking an account has been verified. Any personal identifying information collected to verify age may not be used for any other purpose.

Moreover, with respect to existing accounts, the bill requires regulated social media platforms to:
- Terminate any account that is reasonably known by the social media platform to be held by a minor younger than 16 years of age and provide a minimum of 90 days for an account holder to dispute such termination by verifying his or her age.
- Allow an account holder younger than 16 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.
- Allow the confirmed parent or guardian of an account holder younger than 16 years of age to request the minor's account be terminated. Termination must be effective within 10 business days after such request.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

The bill provides that if the social media platform allows minors younger than 18 years of age to create an account on the platform, the platform must include a clearly labeled, conspicuous, and readily accessible link on its Internet homepage or platform login page that:
- Discloses the following social media platform policies in a manner that is clearly, concisely, prominently, and understandably written using language suited to the age of users who are younger than 18 years of age likely to routinely access the platform without unrelated, confusing, or contradictory materials:

  - The content moderation policies the social media platform uses for content on the platform.
  - Whether the social media platform uses or allows the use of addictive design or deceptive pattern features, including autoplay or infinite scroll.
  - Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.
  - Whether the social media platform considers the best interests of platform users who are younger than 18 years of age when designing, developing, and providing services.
  - The methodology the social media platform uses to consider the best interests of platform users who are younger than 18 years of age when designing, developing, and providing services.
  - The policies and protections the social media platform uses to protect platform users who are younger than 18 years of age against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
  - Whether the social media platform collects or sells personal information of platform users who are younger than 18 years of age, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose the type of personal information collected and the purpose of such collection. If such personal information is sold, the platform must disclose to whom the information is sold.
- Provides clear access to the following:
  - Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.
  - Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
- At the time of log in, and before obtaining access to the platform, requires platform users who are younger than 18 years of age to read and accept a disclaimer which must be in substantially the following form:

> This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

Enforcement

The bill provides that any violation of the bill's regulations is an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act, solely by the Department of Legal Affairs against the regulated social media platform. If the department has reason to believe that a social media platform is in violation of any of the regulations described in the bill, the department, as the enforcing authority, may bring an action against such platform for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to the bill, the sections of the Act providing for individual remedies under the Act,[88] and for application

[88] Section 501.211, F.S.

of the Act,[89] do not apply. In addition to other remedies under the Act, the department may collect a civil penalty of up to $50,000 per violation.

The bill also provides that any regulated social media platform that violates the provisions requiring the termination of "under 16" accounts within a specified time, after being notified to do so by the minor account holder or a confirmed parent or guardian,[90] is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this subsection must be brought within one year after the violation.

Any action brought under either the Act or the previous paragraph may only be brought on behalf of a Florida minor. Additionally, for purposes of bringing an action in accordance with the Act or the previous paragraph, a regulated social media platform that allows a Florida minor younger than 16 years of age to create an account on the platform is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

The bill also provides that if a regulated social media platform allows the account holder to use the social media platform, the parties have entered into a contract.

Other Available Remedies at Law or Equity

The bill does not preclude any other available remedy at law or equity.

Authorization to Adopt Rules

The department may adopt rules to implement the bill.

Effective Date

The bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[89] Section 501.212, F.S.
[90] *See* proposed ss. 501.1736(2)(c)2. (within five business days when requested by an account holder under 16 years of age) and (c)3., F.S. (within 10 business days when requested by the confirmed parent or guardian of an account holder under 16 years of age).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Requiring social media platforms and their users to use age verification presents a complex issue that raises several constitutional concerns. The language in the bill may implicate consideration of a number of constitutional protections.

First Amendment Right to Freedom of Speech

The First Amendment to the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."[91] Generally, "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[92] The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.[93]

In most circumstances, these protections "are no less applicable when government seeks to control the flow of information to minors"[94] as states do not possess "a free-floating power to restrict the ideas to which children may be exposed."[95]

Many of the questions regarding the constitutionality of age verification laws may concern whether such laws are sufficiently narrow to avoid inhibiting more speech than necessary. The degree of tailoring required may vary depending on whether a given law is content-based or content-neutral. In both circumstances, a law's constitutionality depends on several factors, including the:

- Strength of the government's interest.
- Amount of protected speech that the law directly or indirectly restricts.
- Availability of less speech-restrictive alternatives.[96]

Content-neutral regulations on free speech are legitimate if they advance important governmental interests that are not related to suppression of free speech, do so in a way that is substantially related to those interests, and do not substantially burden more speech than necessary to further those interests.[97]

[91] U.S. CONST. amend. I.
[92] *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).
[93] U.S. CONST. amend. XIV; *see also* FLA. CONST., art. I.
[94] *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 (1975).
[95] *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011).
[96] Eric N. Holmes, Congressional Research Service, *Online Age Verification (Part III): Select Constitutional Issues* (CRS Report No. LSB11022, August 17, 2023), available at https://crsreports.congress.gov/product/pdf/LSB/LSB11022.
[97] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

The U.S. Supreme Court regards content-based laws, which limit communication because of the message it conveys, as presumptively unconstitutional.[98] Such a law may be justified only if the government shows that the law is required to promote a compelling state interest and that the least restrictive means have been chosen to further that articulated interest.[99]

In general, the U.S. Supreme Court has held that requiring adults to prove their age to access certain content is an unconstitutional, content-based limit on free speech, when there are less restrictive means to curb access to minors, such as filters and parental controls.[100]

According to Justice O'Connor's *Reno* dissent, because technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the age verification provision was viewed as ultimately unconstitutional; however, she contemplated the possibility that future technological advances may allow for a constitutionally sound age verification law.[101]

Experts assert that age verification systems have progressed considerably from a generation ago when the U.S. Supreme Court held that age verification methods often failed and were too burdensome for law-abiding adults.[102] Currently, there are numerous minimally invasive verification techniques that do not require sharing any age verification information at all with social media platforms.[103]

Additionally, in determining whether laws requiring age verification to access social media platforms unconstitutionally restrict free speech, courts have found that even if "the state has the power to enforce parental prohibitions it does not follow that the state has the power to prevent children from hearing or saying anything without their parents' prior consent."[104] Moreover:

> [A]ge-verification requirements are more restrictive than policies enabling or encouraging users (or their parents) to control their own access to information, whether through user-installed devices and filters or affirmative requests to third-party companies. "Filters impose selective restrictions on speech at the receiving end, not universal restrictions at the source." And "[u]nder a filtering regime, adults ... may gain access to speech

[98] *Reed v. Town of Gilbert,* 576 U.S. 155, 163 (2015).
[99] *Sable Commc's of California, Inc. vs. F.C.C.,* 492 U.S. 115, 126 (1989).
[100] *Reno v. Am. C. L. Union,* 521 U.S. 844, 874 (1997); *Ashcroft v. American Civil Liberties Union,* 542 U.S. 656, 666 (2004); Ronald Kahn, *Reno v. American Civil Liberties Union (1997),* Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/.
[101] *Reno,* 521 U.S. at 886-91 (O'Connor concurring in part and dissenting in part). The court also considered overbreadth and vagueness arguments, and determined that the Communications Decency Act of 1996 was too broad and vague. *Id.* at 883-84.
[102] Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media,* Nov. 20, 2023, https://broadbandbreakfast.com/2023/11/improved-age-verification-allows-states-to-consider-restricting-social-media/; *Reno,* 521 U.S. at 886 (1997); *Ashcroft,* 542 U.S. at 666.
[103] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation,* Aug. 7, 2023, https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation.
[104] *NetChoice, LLC v. Yost,* 2024 WL 104336, *8 (S.D. Ohio Jan. 9, 2024) (internal citations and quotations omitted).

> they have a right to see without having to identify themselves[.]" Similarly, the State could always "act to encourage the use of filters ... by parents" to protect minors.[105]

Contracts Clause

Article I, Section 10 of the U.S. Constitution prohibits a state from passing any law impairing the obligation of contracts. Article I, Section 10 of the Florida Constitution also prohibits the passage of laws impairing the obligation of contracts. However, the reach of these protections is "limited to preexisting contracts, unlike due process, which extends to future contracts as well."[106]

State Authority to Regulate to Protect Minors

The U.S. Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."[107] In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material.[108]

Supremacy Clause

Article VI, Paragraph 2 of the U.S. Constitution, commonly referred to as the Supremacy Clause, establishes that the federal constitution, and federal law generally, take precedence over state laws and constitutions. The Supremacy Clause also prohibits states from interfering with the federal government's exercise of its constitutional powers and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[109]

Section 230 of the federal Communications Decency Act, in part, specifies that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"[110] and specifically prohibits all inconsistent causes of action and liability imposed under any state or local law.[111]

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[105] *NetChoice, LLC v. Griffin*, 2023 WL 5660155, *21 (W.D. Ark. Aug. 31, 2023) (internal citations omitted).
[106] *Woodstone Ltd. Partn. v. City of Saint Paul, Minnesota*, 2023 WL 3586077, *6 (D. Minnesota May 22, 2023).
[107] *Sable Commc's of California, Inc.*, 492 U.S. at 126.
[108] *Ashcroft*, 542 U.S. at 666; *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004); *but see Erznoznik*, 422 U.S. at 213 (determining that the city's regulation was overly broad).
[109] Cornell Law School, Legal Information Institute, *Supremacy Clause*, https://www.law.cornell.edu/wex/supremacy_clause (last visited Jan. 17, 2024).
[110] 47 U.S.C. s. 230(c)(1).
[111] 47 U.S.C. s. 230(e)(3).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will result in increased costs for companies operating social media platforms, which will now be required to implement new procedures for age verification, including the use of third-party verification services and the creation of certain disclosures.

C. Government Sector Impact:

The bill may result in an increase in civil penalties collected by the Department of Legal Affairs. It may also result in an increase of regulatory costs to the department, which has been tasked with enforcing the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.1736 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.)

None.

B. Amendments:

Barcode 243784 by Fiscal Policy on February 15, 2024:

- In connection with the new statute created by CS/HB 1 (s. 501.1736, F.S., regarding social media use for minors), Section 1 of the amendment:
  - Revises the bill to include definitions for "Addictive features," "Daily active users," and "Resident."
  - Narrows the scope of the "Social media platform" definition to include only platforms meeting certain specified criteria and exclude other specified services.
  - Moves the definition of "Reasonable age verification method" and expanded personal identifying information regulations to a new statute.

- Makes violations of the expanded personal identifying information regulations enforceable under the Florida Deceptive and Unfair Trade Practices Act.

- Section 2 of the amendment incorporates the new statute created by CS/CS/HB 3 (s. 501.1737, F.S., regarding age verification for online access to materials harmful to minors), and:
  - Revises it to include a definition for "Resident."
  - Moves the definition of "Reasonable age verification method" and expanded personal identifying information regulations to a new statute.
  - Makes violations of the expanded personal identifying information regulations enforceable under the Florida Deceptive and Unfair Trade Practices Act.
  - Eliminates provisions requiring commercial entities regulated by the bill to allow minors or their parents or guardians to report unauthorized or unlawful access, and requiring them to prohibit or block access to a minor within 5 days after a report.
- Section 3 of the amendment:
  - Creates the new statute that regulates the age verification process, including what entities may perform it, where they may be based, and by whom they may be owned or controlled.
  - Regulates more specifically what third party entities conducting age verification may do with personal identifying information. (WITH TITLE AMENDMENT)

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/16/2024	.	
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The Committee on Fiscal Policy (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 501.1736, Florida Statutes, is created to read:

501.1736 Social media use for minors.—

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

(a) "Account holder" means a resident who opens an account or creates a profile or is permitted to use or is identified by

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any other form of identification while using or accessing a social media platform when the social media platform knows or has reason to believe the resident is located in this state.

(b) "Addictive features" means features that are designed to cause an account holder to have an excessive or compulsive need to use or engage with the social media platform.

(c) "Daily active users" means the unique users in the United States who used the social media platform at least 80 percent of the days during the previous calendar year, or if the social media platform did not exist during the previous calendar year, the number of unique users in the United States who used the social media platform at least 80 percent of the days during the previous month.

(d) "Department" means the Department of Legal Affairs.

(e) "Reasonable age verification method" means a commercially reasonable method used by a government agency or a business for the purpose of age verification which is conducted by a nongovernmental, independent, third party organized under the laws of a state of the United States which:

1. Has its principal place of business in a state of the United States; and

2. Is not owned or controlled by a company formed in a foreign country, a government of a foreign country, or any other entity formed in a foreign country.

(f) "Resident" means a person who lives in this state for more than 6 months of the year.

(g) "Social media platform" means an online forum, a website, or an application offered by an entity which does all of the following:

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1. Uses algorithms that analyze user data or information on users whom the online forum, website, or application knows or has reason to believe are younger than 16 years of age to:

a. Select content for users; or

b. Target advertising toward users.

2. Has one or more of the following addictive features:

a. Infinite scrolling with continuous loading content, or content that loads as the user scrolls down the page without the need to open a separate page; or seamless content, or the use of pages with no visible or apparent breaks.

b. Push notifications or alerts sent by the online forum, website, or application to inform a user about specific activities or events related to the user's account.

c. Display personal interactive metrics that indicate the number of times other users have clicked a button to indicate reaction to content or have shared or reposted the content.

d. Auto-play video or video that begins to play without the user first clicking on the video or on a play button for that video.

e. Live-streaming or a function that allows a user or advertiser to broadcast live video content in real-time.

3. Has 10 percent or more of daily active users younger than 16 years of age spending, on average, 2 hours per day on the online forum, website, or application.

4. Allows a user to upload content or view the content or activity of other users.

The term does not include an online service, a website, or an application where the exclusive function is e-mail or direct

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messaging consisting of text, photographs, pictures, images, or videos shared only between the sender and the recipients, without displaying or posting publicly or to other users not specifically identified as the recipients by the sender.

(2)(a) A social media platform shall do all of the following:

1. Prohibit a minor who is younger than 16 years of age from entering into a contract with a social media platform to become an account holder.

2. Use reasonable age verification methods to verify the age of each account holder on the social media platform at the time a new account is created. If an account holder fails to verify his or her age, the social media platform must deny the account.

3. Use a reasonable age verification method to perform age verification that ensures that the requirements of subsection (3) are met.

(b) For existing accounts, a social media platform shall do the following:

1. Terminate any account that the social media platform knows or has reason to believe is held by an account holder younger than 16 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely younger than 16 years of age for purposes of targeting content or advertising, and provide a minimum of 90 days for an account holder to dispute such termination by verifying his or her age.

2. Allow an account holder younger than 16 years of age to request to terminate the account. Termination must be effective

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within 5 business days after such request.

3. Allow the confirmed parent or guardian of an account holder younger than 16 years of age to request the minor's account be terminated. Termination must be effective within 10 business days after such request.

4. Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

(3) A third party conducting age verification:

(a) May not retain personal identifying information used to verify age once the age of an account holder or a person seeking an account has been verified.

(b) May not use personal identifying information used to verify age for any other purpose.

(c) Must keep anonymous any personal identifying information used to verify age. Such information may not be shared or otherwise communicated to any person.

(d) Must protect personal identifying information used to verify age from unauthorized or illegal access, destruction, use, modification, or disclosure through reasonable security procedures and practices appropriate to the nature of the personal information.

(4)(a) Any violation of subsection (2) is deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against a social media platform. If the department has reason to believe that a social media platform is in violation of subsection (2), the department, as the enforcing authority, may bring an action against such platform for an unfair or deceptive act or

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practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation.

(b) A third party that performs age verification for a social media platform in violation of subsection (3) is deemed to have committed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against such third party. If the department has reason to believe that the third party is in violation of subsection (3), the department, as the enforcing authority, may bring an action against such third party for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation.

(5)(a) A social media platform that violates subparagraph (2)(b)2. or subparagraph (2)(b)3. for failing to terminate an account within the required time after being notified to do so by the minor account holder or a confirmed parent or guardian is liable to such minor account holder for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages.

(b) A civil action for a claim under this subsection must be brought within 1 year after the violation.

(6) Any action brought under subsection (4) or subsection (5) may only be brought on behalf of a minor account holder.

(7) For purposes of bringing an action in accordance with

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subsection (4) or subsection (5), a social media platform that allows a minor account holder younger than 16 years of age to create an account on such platform is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(8) If a social media platform allows an account holder to use the social media platform, the parties have entered into a contract.

(9) This section does not preclude any other available remedy at law or equity.

(10) The department may adopt rules to implement this section.

Section 2. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 3. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to online protections for minors; creating s. 501.1736, F.S.; defining terms; requiring


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social media platforms to prohibit certain minors from creating new accounts, to use reasonable age verification methods to verify the ages of account holders, and to terminate certain accounts and provide additional options for termination of such accounts; providing requirements for a third party conducting age verification; authorizing the Department of Legal Affairs to bring actions for violations under the Florida Deceptive and Unfair Trade Practices Act; providing penalties; providing for private causes of action; providing that certain social media platforms are subject to the jurisdiction of state courts; providing that if a social media platform allows an account holder to use such platform, the parties have entered into a contract; providing construction; authorizing the department to adopt rules; providing for severability; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2024	.	
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The Committee on Fiscal Policy (Hutson) recommended the following:

Senate ~~Substitute for~~ Amendment ~~(969436)~~ (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 501.1736, Florida Statutes, is created to read:

501.1736 Social media use for minors.—

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

(a) "Account holder" means a resident who opens an account

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or creates a profile or is permitted to use or is identified by any other form of identification while using or accessing a social media platform when the social media platform knows or has reason to believe the resident is located in this state.

(b) "Addictive features" means features that are designed to cause an account holder to have an excessive or compulsive need to use or engage with the social media platform.

(c) "Daily active users" means the unique users in the United States who used the social media platform at least 80 percent of the days during the previous calendar year, or if the social media platform did not exist during the previous calendar year, the number of unique users in the United States who used the social media platform at least 80 percent of the days during the previous month.

(d) "Department" means the Department of Legal Affairs.

(e) "Reasonable age verification method" has the same meaning as in s. 501.1738.

(f) "Resident" means a person who lives in this state for more than 6 months of the year.

(g) "Social media platform" means an online forum, a website, or an application offered by an entity which does all of the following:

1. Uses algorithms that analyze user data or information on users whom the online forum, website, or application knows or has reason to believe are younger than 16 years of age to:

a. Select content for users; or

b. Target advertising toward users.

2. Has one or more of the following addictive features:

a. Infinite scrolling with continuous loading content, or

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content that loads as the user scrolls down the page without the need to open a separate page; or seamless content, or the use of pages with no visible or apparent breaks.

b. Push notifications or alerts sent by the online forum, website, or application to inform a user about specific activities or events related to the user's account.

c. Display personal interactive metrics that indicate the number of times other users have clicked a button to indicate reaction to content or have shared or reposted the content.

d. Auto-play video or video that begins to play without the user first clicking on the video or on a play button for that video.

e. Live-streaming or a function that allows a user or advertiser to broadcast live video content in real-time.

3. Has 10 percent or more of daily active users younger than 16 years of age spending, on average, 2 hours per day on the online forum, website, or application.

4. Allows a user to upload content or view the content or activity of other users.

The term does not include an online service, a website, or an application where the exclusive function is e-mail or direct messaging consisting of text, photographs, pictures, images, or videos shared only between the sender and the recipients, without displaying or posting publicly or to other users not specifically identified as the recipients by the sender.

(2)(a) A social media platform shall do all of the following:

1. Prohibit a minor who is younger than 16 years of age

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from entering into a contract with a social media platform to become an account holder.

2. Use reasonable age verification methods to verify the age of each account holder on the social media platform at the time a new account is created. If an account holder fails to verify his or her age, the social media platform must deny the account.

3. Use a reasonable age verification method to perform age verification that ensures that the requirements of s. 501.1738 are met.

(b) For existing accounts, a social media platform shall do the following:

1. Terminate any account that the social media platform knows or has reason to believe is held by an account holder younger than 16 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely younger than 16 years of age for purposes of targeting content or advertising, and provide a minimum of 90 days for an account holder to dispute such termination by verifying his or her age.

2. Allow an account holder younger than 16 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

3. Allow the confirmed parent or guardian of an account holder younger than 16 years of age to request the minor’s account be terminated. Termination must be effective within 10 business days after such request.

4. Permanently delete all personal information held by the social media platform relating to the terminated account, unless

there are legal requirements to maintain such information.

(3)(a) Any violation of subsection (2) is deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against a social media platform. If the department has reason to believe that a social media platform is in violation of subsection (2), the department, as the enforcing authority, may bring an action against such platform for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation.

(b) A third party that performs age verification for a social media platform in violation of s. 501.1738 is deemed to have committed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against such third party. If the department has reason to believe that the third party is in violation of s. 501.1738, the department, as the enforcing authority, may bring an action against such third party for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation.

(4)(a) A social media platform that violates subparagraph (2)(b)2. or subparagraph (2)(b)3. for failing to terminate an account within the required time after being notified to do so by the minor account holder or a confirmed parent or guardian is liable to such minor account holder for such access, including

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court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages.

(b) A civil action for a claim under this subsection must be brought within 1 year after the violation.

(5) Any action brought under subsection (3) or subsection (4) may only be brought on behalf of a minor account holder.

(6) For purposes of bringing an action in accordance with subsection (3) or subsection (4), a social media platform that allows a minor account holder younger than 16 years of age to create an account on such platform is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(7) If a social media platform allows an account holder to use the social media platform, the parties have entered into a contract.

(8) This section does not preclude any other available remedy at law or equity.

(9) The department may adopt rules to implement this section.

Section 2. Section 501.1737, Florida Statutes, is created to read:

501.1737 Age verification for online access to materials harmful to minors.—

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

(a) "Commercial entity" includes a corporation, a limited liability company, a partnership, a limited partnership, a sole proprietorship, and any other legally recognized entity.

(b) "Department" means the Department of Legal Affairs.

(c) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means.

(d) "Material harmful to minors" means any material that:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;

2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in s. 847.001(19); and

3. When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(e) "News-gathering organization" means any of the following:

1. A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and an employee thereof who can provide documentation of such employment.

2. A radio broadcast station, television broadcast station, cable television operator, or wire service, and an employee thereof who can provide documentation of such employment.

(f) "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.

(g) "Reasonable age verification methods" has the same meaning as in s. 501.1738.

(h) "Resident" means a person who lives in this state for more than 6 months of the year.


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(i) "Substantial portion" means more than 33.3 percent of total material on a website or application.

(2) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors, must perform reasonable age verification methods to verify the age of a person attempting to access the material is 18 years of age or older and prevent access to the material by a person younger than 18 years of age.

(3) A commercial entity or third party that performs reasonable age verification methods may not retain any personal identifying information of the person seeking online access to material harmful to minors any longer than is reasonably necessary to verify the age of the person. Any personal identifying information collected for age verification may not be used for any other purpose.

(4)(a) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and does not affect the rights of a news-gathering organization.

(b) An Internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider does not violate this section solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the provider's control, including transmission, downloading, intermediate storage, or access software, to the extent the provider is not responsible for the creation of the content of the communication which constitutes material harmful to minors.

(5)(a) Any violation of subsection (2) or subsection (3) is deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department on behalf of a resident minor against a commercial entity. If the department has reason to believe that a commercial entity is in violation of subsection (2) or subsection (3), the department, as the enforcing authority, may bring an action against the commercial entity for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to any other remedy under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation of this section.

(b) A commercial entity that violates subsection (2) for failing to prohibit or block a minor from future access to material harmful to minors after a report of unauthorized or unlawful access is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this paragraph must be brought within 1 year after the violation.

(c) Any action under this subsection may only be brought on behalf of or by a resident minor.

(6) For purposes of bringing an action under subsection (5), a commercial entity that publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors and such website or application is available to be accessed in this state, is considered to be both engaged in substantial and not isolated activities within this state and

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operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(7) This section does not preclude any other available remedy at law or equity.

(8) The department may adopt rules to implement this section.

Section 3. Section 501.1738, Florida Statutes, is created to read:

501.1738 Reasonable age verification.—

(1) As used in this section, the term "reasonable age verification method" means a commercially reasonable method used by a government agency or a business for the purpose of age verification which is conducted by a nongovernmental, independent, third-party organized under the laws of a state of the United States which:

(a) Has its principal place of business in a state of the United States; and

(b) Is not owned or controlled by a company formed in a foreign country, a government of a foreign country, or any other entity formed in a foreign country.

(2) A third party conducting age verification pursuant to ss. 501.1736 and 501.1737:

(a) May not retain personal identifying information used to verify age once the age of an account holder or a person seeking an account has been verified.

(b) May not use personal identifying information used to verify age for any other purpose.

(c) Must keep anonymous any personal identifying

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information used to verify age. Such information may not be shared or otherwise communicated to any person.

(d) Must protect personal identifying information used to verify age from unauthorized or illegal access, destruction, use, modification, or disclosure through reasonable security procedures and practices appropriate to the nature of the personal information.

Section 4. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 5. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to online protections for minors; creating s. 501.1736, F.S.; defining terms; requiring social media platforms to prohibit certain minors from creating new accounts, to use reasonable age verification methods to verify the ages of account holders, and to terminate certain accounts and provide additional options for termination of such accounts; authorizing the Department of Legal Affairs to bring actions for violations under the Florida Deceptive and

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Unfair Trade Practices Act; providing penalties; providing for private causes of actions; providing that certain social media platforms are subject to the jurisdiction of state courts; providing that if a social media platform allows an account holder to use such platform, the parties have entered into a contract; providing construction; authorizing the department to adopt rules; creating s. 501.1737, F.S.; defining terms; requiring a commercial entity that publishes or distributes material harmful to minors on a website or application that contains a substantial portion of such material to perform reasonable age verification methods and prevent access to such material by minors; prohibiting the retention of certain personal identifying information; providing applicability and construction; authorizing the Department of Legal Affairs to bring an action for violations under the Florida Deceptive and Unfair Trade Practices Act; providing civil penalties; providing for private causes of action; providing that certain commercial entities are subject to the jurisdiction of state courts; providing construction; authorizing the department to adopt rules; creating s. 501.1738, F.S.; defining the term “reasonable age verification method”; providing requirements for a third party conducting age verification pursuant to certain provisions; providing for severability; providing an effective date.

A bill to be entitled

An act relating to social media use for minors; creating s. 501.1736, F.S.; providing definitions; requiring social media platforms to prohibit certain minors from creating new accounts, to terminate certain accounts and provide additional options for termination of such accounts, to use reasonable age verification methods to verify the ages of account holders, and to disclose specified policies and provide specified resources, measures, and disclaimers; authorizing the Department of Legal Affairs to bring actions for violations under the Florida Deceptive and Unfair Trade Practices Act; providing penalties; providing for private causes of actions; providing that certain social media platforms are subject to the jurisdiction of state courts; providing that if a social media platform allows an account holder to use such platform, the parties have entered into a contract; providing construction; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 501.1736, Florida Statutes, is created

to read:

501.1736 Social media use for minors.—

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

(a) "Account holder" means a resident of this state who opens an account or creates a profile or is permitted to use any other form of identification to use or access a social media platform.

(b) "Department" means the Department of Legal Affairs.

(c) "Reasonable age verification method" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.

(d) "Social media platform:"

1. Means an online forum, website, or application offered by an entity that does all of the following:

a. Allows the social media platform to track the activity of the account holder.

b. Allows an account holder to upload content or view the content or activity of other account holders.

c. Allows an account holder to interact with or track other account holders.

d. Utilizes addictive, harmful, or deceptive design features, or any other feature that is designed to cause an account holder to have an excessive or compulsive need to use or engage with the social media platform.

e. Allows the utilization of information derived from the social media platform's tracking of the activity of an account holder to control or target at least part of the content offered to the account holder.

2. Does not include an online service, website, or application where the predominant or exclusive function is:

a. Electronic mail.

b. Direct messaging consisting of text, photos, or videos that are sent between devices by electronic means where messages are shared between the sender and the recipient only, visible to the sender and the recipient, and are not posted publicly.

c. A streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service.

d. News, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided incidental to, directly related to, or dependent upon provision of the content.

e. Online shopping or e-commerce, if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews or display lists or collections of goods for sale or wish lists, or other functions that are focused on online shopping or e-commerce

FLORIDA HOUSE OF REPRESENTATIVES

CS/HB 1, Engrossed 1 2024

rather than interaction between users or account holders.

f. Interactive gaming, virtual gaming, or an online service, that allows the creation and uploading of content for the purpose of interactive gaming, edutainment, or associated entertainment, and the communication related to that content.

g. Photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting.

h. A professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic.

i. Single-purpose community groups for public safety if the interaction with other users or account holders is generally limited to that single purpose and the community group has guidelines or policies against illegal content.

j. To provide career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services.

k. Business to business software.

l. A teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real time communication.

m. Shared document collaboration.

n. Cloud computing services, which may include cloud storage and shared document collaboration.

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

hb0001-02-e1

o. To provide access to or interacting with data visualization platforms, libraries, or hubs.

p. To permit comments on a digital news website, if the news content is posted only by the provider of the digital news website.

q. To provide or obtain technical support for a platform, product, or service.

r. Academic, scholarly, or genealogical research where the majority of the content that is posted or created is posted or created by the provider of the online service, website, or application and the ability to chat, comment, or interact with other users is directly related to the provider's content.

s. A classified ad service that only permits the sale of goods and prohibits the solicitation of personal services or that is used by and under the direction of an educational entity, including:

(I) A learning management system;

(II) A student engagement program; and

(III) A subject or skill-specific program.

(2) A social media platform shall do all of the following:

(a) Prohibit a minor who is younger than 16 years of age from entering into a contract with a social media platform to become an account holder.

(b)1. Use reasonable age verification methods to verify the age of each account holder on the social media platform at

the time a new account is created. If an account holder fails to verify his or her age, the social media platform must deny the account. The reasonable age verification method must be conducted by a nongovernmental, independent, third-party not affiliated with the social media platform.

2. Personal identifying information used to verify age may not be retained once the age of an account holder or a person seeking an account has been verified. Any personal identifying information collected to verify age may not be used for any other purpose.

(c) For existing accounts:

1. Terminate any account that is reasonably known by the social media platform to be held by a minor younger than 16 years of age and provide a minimum of 90 days for an account holder to dispute such termination by verifying his or her age.

2. Allow an account holder younger than 16 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

3. Allow the confirmed parent or guardian of an account holder younger than 16 years of age to request the minor's account be terminated. Termination must be effective within 10 business days after such request.

4. Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

(d) If the social media platform allows minors younger than 18 years of age to create an account on the platform, the platform must include a clearly labeled, conspicuous, and readily accessible link on its Internet homepage or platform login page that:

1. Discloses the following social media platform policies in a manner that is clearly, concisely, prominently, and understandably written using language suited to the age of users who are younger than 18 years of age likely to routinely access the platform without unrelated, confusing, or contradictory materials:

a. The content moderation policies the social media platform uses for content on the platform.

b. Whether the social media platform uses or allows the use of addictive design or deceptive pattern features, including autoplay or infinite scroll.

c. Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.

d. Whether the social media platform considers the best interests of platform users who are younger than 18 years of age when designing, developing, and providing services.

e. The methodology the social media platform uses to consider the best interests of platform users who are younger than 18 years of age when designing, developing, and providing services.

f. The policies and protections the social media platform uses to protect platform users who are younger than 18 years of age against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

g. Whether the social media platform collects or sells personal information of platform users who are younger than 18 years of age, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose the type of personal information collected and the purpose of such collection. If such personal information is sold, the platform must disclose to whom the information is sold.

2. Provides clear access to the following:

a. Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.

b. Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

3. At the time of log in, and before obtaining access to the platform, requires platform users who are younger than 18 years of age to read and accept a disclaimer which must be in substantially the following form:

This application may be harmful to your mental health and may use design features that have addictive

qualities or present unverified information or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

(3) Any violation of subsection (2) is an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against a social media platform. If the department has reason to believe that a social media platform is in violation of subsection (2), the department, as the enforcing authority, may bring an action against such platform for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation.

(4)(a) A social media platform that violates subparagraph (2)(c)2. or subparagraph (2)(c)3. for failing to terminate an account within the required time after being notified to do so by the minor account holder or a confirmed parent or guardian is liable to such Florida minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages.

(b) A civil action for a claim under this subsection must

be brought within 1 year after the violation.

(5) Any action brought under subsection (3) or subsection (4) may only be brought on behalf of a Florida minor.

(6) For purposes of bringing an action in accordance with subsections (3) and (4), a social media platform that allows a Florida minor younger than 16 years of age to create an account on such platform is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business, and doing business in this state and is therefore subject to the jurisdiction of the courts of this state.

(7) If a social media platform allows the account holder to use the social media platform, the parties have entered into a contract.

(8) This section does not preclude any other available remedy at law or equity.

(9) The department may adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2024.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
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The Committee on Fiscal Policy (Hutson) recommended the following:

Senate ~~Substitute for~~ Amendment ~~(969436)~~ (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 501.1736, Florida Statutes, is created to read:

501.1736 Social media use for minors.—

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

(a) "Account holder" means a resident who opens an account

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or creates a profile or is permitted to use or is identified by any other form of identification while using or accessing a social media platform when the social media platform knows or has reason to believe the resident is located in this state.

(b) "Addictive features" means features that are designed to cause an account holder to have an excessive or compulsive need to use or engage with the social media platform.

(c) "Daily active users" means the unique users in the United States who used the social media platform at least 80 percent of the days during the previous calendar year, or if the social media platform did not exist during the previous calendar year, the number of unique users in the United States who used the social media platform at least 80 percent of the days during the previous month.

(d) "Department" means the Department of Legal Affairs.

(e) "Reasonable age verification method" has the same meaning as in s. 501.1738.

(f) "Resident" means a person who lives in this state for more than 6 months of the year.

(g) "Social media platform" means an online forum, a website, or an application offered by an entity which does all of the following:

1. Uses algorithms that analyze user data or information on users whom the online forum, website, or application knows or has reason to believe are younger than 16 years of age to:

a. Select content for users; or

b. Target advertising toward users.

2. Has one or more of the following addictive features:

a. Infinite scrolling with continuous loading content, or

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content that loads as the user scrolls down the page without the need to open a separate page; or seamless content, or the use of pages with no visible or apparent breaks.

b. Push notifications or alerts sent by the online forum, website, or application to inform a user about specific activities or events related to the user's account.

c. Display personal interactive metrics that indicate the number of times other users have clicked a button to indicate reaction to content or have shared or reposted the content.

d. Auto-play video or video that begins to play without the user first clicking on the video or on a play button for that video.

e. Live-streaming or a function that allows a user or advertiser to broadcast live video content in real-time.

3. Has 10 percent or more of daily active users younger than 16 years of age spending, on average, 2 hours per day on the online forum, website, or application.

4. Allows a user to upload content or view the content or activity of other users.

The term does not include an online service, a website, or an application where the exclusive function is e-mail or direct messaging consisting of text, photographs, pictures, images, or videos shared only between the sender and the recipients, without displaying or posting publicly or to other users not specifically identified as the recipients by the sender.

(2)(a) A social media platform shall do all of the following:

1. Prohibit a minor who is younger than 16 years of age

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from entering into a contract with a social media platform to become an account holder.

2. Use reasonable age verification methods to verify the age of each account holder on the social media platform at the time a new account is created. If an account holder fails to verify his or her age, the social media platform must deny the account.

3. Use a reasonable age verification method to perform age verification that ensures that the requirements of s. 501.1738 are met.

(b) For existing accounts, a social media platform shall do the following:

1. Terminate any account that the social media platform knows or has reason to believe is held by an account holder younger than 16 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely younger than 16 years of age for purposes of targeting content or advertising, and provide a minimum of 90 days for an account holder to dispute such termination by verifying his or her age.

2. Allow an account holder younger than 16 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

3. Allow the confirmed parent or guardian of an account holder younger than 16 years of age to request the minor’s account be terminated. Termination must be effective within 10 business days after such request.

4. Permanently delete all personal information held by the social media platform relating to the terminated account, unless

there are legal requirements to maintain such information.

(3)(a) Any violation of subsection (2) is deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against a social media platform. If the department has reason to believe that a social media platform is in violation of subsection (2), the department, as the enforcing authority, may bring an action against such platform for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation.

(b) A third party that performs age verification for a social media platform in violation of s. 501.1738 is deemed to have committed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against such third party. If the department has reason to believe that the third party is in violation of s. 501.1738, the department, as the enforcing authority, may bring an action against such third party for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation.

(4)(a) A social media platform that violates subparagraph (2)(b)2. or subparagraph (2)(b)3. for failing to terminate an account within the required time after being notified to do so by the minor account holder or a confirmed parent or guardian is liable to such minor account holder for such access, including

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court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages.

(b) A civil action for a claim under this subsection must be brought within 1 year after the violation.

(5) Any action brought under subsection (3) or subsection (4) may only be brought on behalf of a minor account holder.

(6) For purposes of bringing an action in accordance with subsection (3) or subsection (4), a social media platform that allows a minor account holder younger than 16 years of age to create an account on such platform is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(7) If a social media platform allows an account holder to use the social media platform, the parties have entered into a contract.

(8) This section does not preclude any other available remedy at law or equity.

(9) The department may adopt rules to implement this section.

Section 2. Section 501.1737, Florida Statutes, is created to read:

501.1737 Age verification for online access to materials harmful to minors.—

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

(a) "Commercial entity" includes a corporation, a limited liability company, a partnership, a limited partnership, a sole proprietorship, and any other legally recognized entity.

(b) "Department" means the Department of Legal Affairs.

(c) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means.

(d) "Material harmful to minors" means any material that:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;

2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in s. 847.001(19); and

3. When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(e) "News-gathering organization" means any of the following:

1. A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and an employee thereof who can provide documentation of such employment.

2. A radio broadcast station, television broadcast station, cable television operator, or wire service, and an employee thereof who can provide documentation of such employment.

(f) "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.

(g) "Reasonable age verification methods" has the same meaning as in s. 501.1738.

(h) "Resident" means a person who lives in this state for more than 6 months of the year.


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(i) "Substantial portion" means more than 33.3 percent of total material on a website or application.

(2) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors, must perform reasonable age verification methods to verify the age of a person attempting to access the material is 18 years of age or older and prevent access to the material by a person younger than 18 years of age.

(3) A commercial entity or third party that performs reasonable age verification methods may not retain any personal identifying information of the person seeking online access to material harmful to minors any longer than is reasonably necessary to verify the age of the person. Any personal identifying information collected for age verification may not be used for any other purpose.

(4)(a) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and does not affect the rights of a news-gathering organization.

(b) An Internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider does not violate this section solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the provider's control, including transmission, downloading, intermediate storage, or access software, to the extent the provider is not responsible for the creation of the content of the communication which constitutes material harmful to minors.

(5)(a) Any violation of subsection (2) or subsection (3) is deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department on behalf of a resident minor against a commercial entity. If the department has reason to believe that a commercial entity is in violation of subsection (2) or subsection (3), the department, as the enforcing authority, may bring an action against the commercial entity for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to any other remedy under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation of this section.

(b) A commercial entity that violates subsection (2) for failing to prohibit or block a minor from future access to material harmful to minors after a report of unauthorized or unlawful access is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this paragraph must be brought within 1 year after the violation.

(c) Any action under this subsection may only be brought on behalf of or by a resident minor.

(6) For purposes of bringing an action under subsection (5), a commercial entity that publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors and such website or application is available to be accessed in this state, is considered to be both engaged in substantial and not isolated activities within this state and

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operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(7) This section does not preclude any other available remedy at law or equity.

(8) The department may adopt rules to implement this section.

Section 3. Section 501.1738, Florida Statutes, is created to read:

501.1738 Reasonable age verification.—

(1) As used in this section, the term "reasonable age verification method" means a commercially reasonable method used by a government agency or a business for the purpose of age verification which is conducted by a nongovernmental, independent, third-party organized under the laws of a state of the United States which:

(a) Has its principal place of business in a state of the United States; and

(b) Is not owned or controlled by a company formed in a foreign country, a government of a foreign country, or any other entity formed in a foreign country.

(2) A third party conducting age verification pursuant to ss. 501.1736 and 501.1737:

(a) May not retain personal identifying information used to verify age once the age of an account holder or a person seeking an account has been verified.

(b) May not use personal identifying information used to verify age for any other purpose.

(c) Must keep anonymous any personal identifying

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information used to verify age. Such information may not be shared or otherwise communicated to any person.

(d) Must protect personal identifying information used to verify age from unauthorized or illegal access, destruction, use, modification, or disclosure through reasonable security procedures and practices appropriate to the nature of the personal information.

Section 4. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 5. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to online protections for minors; creating s. 501.1736, F.S.; defining terms; requiring social media platforms to prohibit certain minors from creating new accounts, to use reasonable age verification methods to verify the ages of account holders, and to terminate certain accounts and provide additional options for termination of such accounts; authorizing the Department of Legal Affairs to bring actions for violations under the Florida Deceptive and

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Unfair Trade Practices Act; providing penalties; providing for private causes of actions; providing that certain social media platforms are subject to the jurisdiction of state courts; providing that if a social media platform allows an account holder to use such platform, the parties have entered into a contract; providing construction; authorizing the department to adopt rules; creating s. 501.1737, F.S.; defining terms; requiring a commercial entity that publishes or distributes material harmful to minors on a website or application that contains a substantial portion of such material to perform reasonable age verification methods and prevent access to such material by minors; prohibiting the retention of certain personal identifying information; providing applicability and construction; authorizing the Department of Legal Affairs to bring an action for violations under the Florida Deceptive and Unfair Trade Practices Act; providing civil penalties; providing for private causes of action; providing that certain commercial entities are subject to the jurisdiction of state courts; providing construction; authorizing the department to adopt rules; creating s. 501.1738, F.S.; defining the term “reasonable age verification method”; providing requirements for a third party conducting age verification pursuant to certain provisions; providing for severability; providing an effective date.

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

CS/HB 1
Bill Number or Topic

969436
Amendment Barcode (if applicable)

Name Maxx Fenning

Phone (561) 221-8809

Address 1327 Partridge Close
Street

Email maxxfenning@prismfl.org

Pompano Beach FL 33064
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. 2020-2022JointRules.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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2/15/2024
Meeting Date

Fiscal Policy
Committee

HB 1
Bill Number or Topic

969436
Amendment Barcode (if applicable)

Name Steven Rocha

Phone 954 496 2902

Address 4381 Veleiros Avenue
Street

Email stevenrocha@prismfl.org

Pompano Beh FL 33064
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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PRISM FL

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02/15/24
Meeting Date

Fiscal Policy
Committee

CS/HB1
Bill Number or Topic

969436
Amendment Barcode (if applicable)

Name Giancarlo Castellanos Phone

Address Email

Street

Miami FL 33186
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/2024
Meeting Date

Fiscal Policy
Committee

CS/HB1
Bill Number or Topic

969436
Amendment Barcode (if applicable)

Name Kevin Parker

Phone

Address

Email

Street

City State Zip 34744

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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S-001 (08/10/2021)

02/15/23
Meeting Date

Fiscal Policy
Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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~~SB~~ HB 1
Bill Number or Topic

969436
Amendment Barcode (if applicable)

Name Samira Bursik

Phone 8135881038

Address

Email

Street
RUSKIN 33573
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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/24
Meeting Date

Fiscal Policy
Committee

CS/HB 1
Bill Number or Topic

969436
Amendment Barcode (if applicable)

Name Robert Lee

Phone

Address

Email

Street

Tallahassee FL 32303
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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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 the Senator or Senate Professional Staff conducting the meeting)

2-15-24
Meeting Date

CS/HB 1
Bill Number (if applicable)

Topic Fiscal policy

969436
Amendment Barcode (if applicable)

Name Angelique Godwin

Job Title

Address
Street

Phone

Pensacola FL 32503
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/2024
Meeting Date

Fiscal Policy
Committee

CS/HB 7
Bill Number or Topic

969436
Amendment Barcode (if applicable)

Name Felix Nickel

Phone

Address
Street

Email

Seminole 33777
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. 2020-2022JointRules.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

2/15/2024
Meeting Date

Fiscal Policy
Committee

CS/HB 1
Bill Number or Topic

243784
Amendment Barcode (if applicable)

Name Maxx Fenning

Phone (561) 221-8809

Address 1327 Partridge Close
Street

Email maxxfenning@prismfl.org

Pompano Beach FL 33064
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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/2024
Meeting Date

Fiscal Policy
Committee

HB 1
Bill Number or Topic

243784
Amendment Barcode (if applicable)

Name Steven Rocha

Phone 954 496-2952

Address 4381 Veleiros Ave
Street

Email stevenrocha@prismfl.org

Pompano Bch FL 33064
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:
PRISM FL

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/24
Meeting Date

Fiscal Policy
Committee

HB 1
Bill Number or Topic

243784
Amendment Barcode (if applicable)

Name Karen Jaroch (já·rōsh)

Phone 813-318-2344

Address 16501 E. Course Dr
Street

Email karen.jaroch@heritageaction.com

Tampa FL 33624
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:
Heritage Action for America

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-15-2024
Meeting Date

Fiscal Policy
Committee

HB3
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bonnie Patterson-James 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:

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/24
Meeting Date

Fiscal Policy
Committee

CS/HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Amy Perwien

Phone

Address
Street

Email

Naples 34119
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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

2/15/24
Meeting Date

Fiscal Policy
Committee

The Florida Senate
APPEARANCE RECORD

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

#B 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ryan Kennedy

Phone 239-671-5733

Address 9745 Roadstone cdr.
Street

Email ryan@goflca.org

Fort Myers FL 33967
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 Citizens Alliance

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Gonzalez

Phone

Address 700 Pennsylvania Ave SE
Street

Email greg.gonzalez@thefire.org

Washington DC 20003
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:
Foundation for Individual Rights and Expression (FIRE)

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2.15.24	HB 1
Meeting Date	Bill Number or Topic
Fiscal Policy	
Committee	Amendment Barcode (if applicable)

Name Kara Gross

Phone 786-363-4436

Address 4343 Flagler St
Street

Email kgross@aclufl.org

Miami FL 33134
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:
ACLU of Florida

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Jaroch (já rōsh)

Phone 813-318-2344

Address 16501 E. Course Dr
Street

Email Karen.jaroch@heritageaction.com

Tampa FL 33624
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: Heritage Action for America

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

HB1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lauren Buete

Phone (727) 212-7408

Address 317 E. Park Ave
Street

Email laurenb@floridafaf.org

Tallahassee FL 32304
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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/2024
Meeting Date

Fiscal Policy
Committee

HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Steven Rocha

Phone 954 496 2902

Address 4381 Veleiros Ave
Street
Pompano Beh FL 33064
City State Zip

Email stevenrocha@prismfl.org

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:
PRISM FL

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

CS/HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Maxx Fenning

Phone (561) 221-8809

Address 1327 Partridge Close
Street

Email maxxfenning@prismfl.org

Pompano Beach FL 33064
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/24
Meeting Date

Fiscal Policy
Committee

HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Labriola

Phone 954-515-2084

Address PO Box 650216
Street

Email JohnLabriola@cfcflorida.net

Miami FL 33265
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: Christian Family Coalition Florida

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/15/2024
Meeting Date

FISCAL POLICY
Committee

CS/HB 1
Bill Number or Topic

Amendment Barcode (if applicable)

Name ELIJAH JOHNSON

Phone

Address

Street

Email

ST. AUGUSTINE FL

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

February 15, 2024
Meeting Date

Fiscal Policy
Committee

1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Phone 850-425-1344

Address 104 S. Monroe Street
Street

Email TcgLobby@aol.com

Tallahassee FL 32301
City *State* *Zip*

Reset Form

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:
PENN America

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-15-24
Meeting Date

Fiscal Policy
Committee

HB 7
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nathan Hoffman

Phone 217-503-7368

Address 215 S Monroe
Street

Email nathan@afloridaprouise.org

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:
Fdn for Florida's future

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/2024
Meeting Date

Fiscal Policy
Committee

1
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Dunagan

Phone 850-877-2165

Address 2617 Mahan Drive
Street

Email mdunagan@flsheriffs.org

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 Sheriffs 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2-15-24
Meeting Date

Fiscal Policy
Committee

001
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Mazzola Phone 407-855-7604

Address 1747 Orlando Central Pkwy Email legislation@floridapta.org
Street

Orlando FL 32809
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: Florida PTA

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2-15-24
Meeting Date

Fiscal Policy
Committee

003
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Mazzola

Phone 407 855 7604

Address 1747 Orlando Central Pkwy
Street

Email legislation@floridapta.org

Orlando FL 32809
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:
Florida PTA

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2024
Meeting Date

Fiscal Policy
Committee

HB 3
Bill Number or Topic

Amendment Barcode (if applicable)

Name Steven Rocha

Phone 954 496 2902

Address 4381 Veleiros Ave
Street
Pompano Bch FL 33064
City State Zip

Email Stevenrocha@prismfl.org

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:
PRISM FL

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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

HB 3
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Gonzalez

Phone

Address 700 Pennsylvania Ave SE
Street

Email greg.gonzalez@thefire.org

Washington DC 20003
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: Foundation for Individual Rights and Expression (FIRE)

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

HB 3
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ryan Kennedy

Phone 239-671-5733

Address 9745 Roundstone cor.
Street

Email ryan@gofica.org

Fort Myers FL 33967
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 Citizens Alliance

☐ 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. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/24
Meeting Date

Fiscal Policy
Committee

HB 3
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Jaroch

Phone 813-318-2344

Address 16501 E Course Dr
Street

Email Karen.jaroch@heritageaction.com

Tampa FL 33624
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:
Heritage Action For America

☐ 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. 2020-2022JointRules.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 Fiscal Policy

BILL:	CS/CS/HB 3
INTRODUCER:	Regulatory Reform & Economic Development Subcommittee; Judiciary Committee; Representatives Tramont, Overdorf, and others
SUBJECT:	Online Access to Materials Harmful to Minors
DATE:	February 13, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Yeatman	FP	**Pre-meeting**
2.				

I. Summary:

CS/CS/HB 3 requires commercial entities that knowingly and intentionally publish or distribute material harmful to minors on a website or application to prohibit access to such material by any person younger than 18 years of age, if their website or application contains a substantial portion of material that is harmful to minors.

The bill requires commercial entities to perform reasonable age-verification methods to verify that the age of a person attempting to access the material is 18 years of age or older. The reasonable age-verification method must be conducted by a nongovernmental, independent third party not affiliated with the commercial entity, and any information used to verify age must be deleted once the age is verified.

The bill requires commercial entities to provide an easily accessible link or function on their homepage, landing page, or age-verification page to allow a minor user or the confirmed parent or guardian of the minor to report unauthorized or unlawful access. Commercial entities must then prohibit or block future access by the minor within five days after receiving such a report.

The bill does not apply to news or news-gathering organizations. It also does not apply to internet service providers, search engines, or cloud service providers that merely provide access to websites or other systems not under their control.

Any violation of the bill's regulations is deemed to be an unfair and deceptive trade practice, actionable only by the Department of Legal Affairs under the Florida Deceptive and Unfair Trade Practices Act. The bill also provides a private cause of action against commercial entities that fail to prohibit or block a minor from future access to material harmful to minors, after a report of unauthorized or unlawful access.

The bill authorizes the department to adopt rules to implement the bill. It takes effect on July 1, 2024.

II. Present Situation:

Effects of Harmful Content on Children

Internet usage and mobile technology have become mainstream, especially among teens and young adults.[1]

> Because the Internet is not subject to regulations, it has emerged as a vehicle for circulation of pornography. Pornographic images are available for consumption in the privacy of one's home via the Internet rather than in public adult bookstores or movie theaters. Therefore, the accessibility, affordability, and anonymity have attracted a wider audience. Research in the United States has shown that 66% of men and 41% of women consume pornography on a monthly basis. An estimated 50% of all Internet traffic is related to sex. These percentages illustrate that pornography is no longer an issue of minority populations but a mass phenomenon that influences our society.[2]

Many users come across pornography on the Internet who are not seeking it, and others seek it out.[3] Adult websites such as Xvideos and Pornhub are among the most visited in the U.S., receiving an average of 693.5 million and 639.6 million monthly visitors, respectively. Of the top 20 most visited websites, four are classified as pornographic.[4]

Seventy percent of teens accidentally stumble upon pornography online,[5] with trends showing teens are generally experiencing an increase in unwanted exposure to pornographic content online.[6] A sample of U.S. high school students in 2021 found that 56 percent viewed pornography in 2020.[7]

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[1] Eric W. Owens et al., *The Impact of Internet Pornography on Adolescents: A Review of the Research,* 19(1-2) SEXUAL ADDICTION & COMPULSIVITY, J. TREATMENT & PREV. 99, 99-122 (2012), available at https://www.tandfonline.com/doi/abs/10.1080/10720162.2012.660431; Amanda Lenhart, *Teens, Social Media & Technology Overview 2015,* Pew Research Center, Apr. 9, 2015, https://www.pewresearch.org/internet/2015/04/09/teens-social-media-technology-2015/.

[2] Simone Kühn & Jurgen Gallinat, *Brain Structure and Functional Connectivity Associated With Pornography Consumption: The Brain on Porn,* 71 JAMA PSYCHIATRY 7, 827-34 (Jul. 2014), available at https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1874574.

[3] Barna, *Porn in the Digital Age: New Research Reveals 10 Trends,* Apr. 6, 2016, https://www.barna.com/research/porn-in-the-digital-age-new-research-reveals-10-trends/.

[4] Joel Khalili, *These are the most popular websites right now – and they might just surprise you (October 2023 edition),* TechRadarPro, Oct. 31, 2023, https://www.techradar.com/news/porn-sites-attract-more-visitors-than-netflix-and-amazon-youll-never-guess-how-many.

[5] The Kaiser Family Foundation, *Generation Rx.com: How Young People Use the Internet for Health Information* (Dec. 2001), at 12, available at https://www.kff.org/wp-content/uploads/2001/11/3202-genrx-report.pdf.

[6] Kimberly J. Mitchell et al., *Trends in Youth Reports of Sexual Solicitations, Harassment and Unwanted Exposure to Pornography on the Internet,* 40 J. ADOLESCENT HEALTH 2, 116, 124 (2006), available at https://www.unh.edu/ccrc/sites/default/files/media/2022-03/trends-in-youth-reports-of-unwanted-sexual-solicitations-harassment-and-unwanted-exposure-to-pornography-on-the-internet.pdf.

[7] Amanda Giordano, *What to Know About Adolescent Pornography Exposure,* Psychology Today, Feb. 27, 2022, https://www.psychologytoday.com/us/blog/understanding-addiction/202202/what-know-about-adolescent-pornography-exposure.

Research suggests that adolescents who view pornography tend to have more sexually permissive attitudes; have more sexual partners in their lifetime; are more likely to have engaged in certain sexual acts;[8] and are more likely to display aggression.[9] Due to the correlational nature of these findings, researchers debate whether these characteristics are precursors to pornography use or a consequence of it; however, pornography use does appear to be a strong exacerbating factor in individuals who have preexisting markers for sexual aggression.[10]

Adolescents who view pornography report feeling insecure about their ability to perform sexually and how they look, and tend to decrease their pornography use as their self-confidence increases or they develop positive relationships with friends and family.[11] Additionally, studies have shown that problematic or excessive pornography use actually changes the reward circuitry in people's brains, which can lead to a loss of self-control and addiction.[12]

Eight states have recently passed laws to require websites with pornography to verify the age of a visitor and block access to minors: Louisiana,[13] Utah, Arkansas, Mississippi, Montana, North Carolina, Texas, and Virginia.[14]

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[8] Debra K. Braun-Corville & Mary Rojas, *Exposure to Sexually Explicit Web Sites and Adolescent Sexual Attitudes and Behaviors*, 45 J. ADOLESCENT HEALTH 2, 156-62 (2009), available at https://www.jahonline.org/article/S1054-139X(08)00658-7/fulltext; Jane D. Brown & Kelly L. L'Engle, *X-Rated Sexual Attitudes and Behaviors Associated With U.S. Early Adolescents' Exposure to Sexually Explicit Media,* 36 J. OF GERIATRIC PSYCHIATRY & NEUROLOGY 1 (Feb. 2009), available at https://www.researchgate.net/publication/23654736_X-Rated_Sexual_Attitudes_and_Behaviors_Associated_With_US_Early_Adolescents'_Exposure_to_Sexually_Explicit_Media.

[9] Eileen M. Alexy et al., *Pornography as a Risk Marker for an Aggressive Pattern of Behavior among Sexually Reactive Children and Adolescents,* 14 J. AM. PSYCHIATR. NURSES ASS'N 6, 442-53 (2009), available at https://journals.sagepub.com/doi/10.1177/1078390308327137.

[10] Michele L. Ybarra et al., *X-rated material and perpetration of sexually aggressive behavior among children and adolescents: is there a link?*, 37 AGGRESSIVE BEHAVIOR 1 (Jan./Feb. 2011), available at https://onlinelibrary.wiley.com/doi/10.1002/ab.20367; Paul J. Wright, *A MetaAnalysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies,* 66 J. COMM. 1, 183-205 (Feb. 2016), available at https://academic.oup.com/joc/article-abstract/66/1/183/4082427?redirectedFrom=fulltext.

[11] Lotta Lofgren-Martenson & Sven-Axel Mason, *Lust, Love, and Life: A Qualitative Study of Swedish Adolescents' Perceptions and Experiences with Pornography*, 47 J. SEX RSCH. 6, 568-79 (2010), available at https://www.tandfonline.com/doi/abs/10.1080/00224490903151374; Thomas Lickona, *Should We Teach Kids About Porn's Harms? Yes, and Here's How*, Psychology Today, Nov. 18, 2019, https://www.psychologytoday.com/ca/blog/raising-kind-kids/201911/should-we-teach-kids-about-porns-harms-yes-and-heres-how; Liang Li et al., *Family Functioning and problematic internet pornography use among adolescents: a moderated mediation model,* Front. Public Health, Jun. 15, 2023, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10307975/.

[12] Simone Kuhn & Jurgen Gallinat, *Brain Structure and Functional Connectivity Associated with Pornography Consumption*, 71 JAMA PSYCHIATRY 7, 827-34 (Jul. 2014), available at https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1874574.

[13] The personal story of pop-singer Billie Eilish inspired the law in Louisiana which blocks access to pornography for minors. Eilish reported that she watched a lot of porn when she was about 11 years old. Eilish believes that the pornography had a drastic effect on her brain and feels "incredibly devastated that I was exposed to so much porn." The author of the bill, a sex addiction therapist, said "I just thought how courageous it was. … It just sort of re-emphasized to me what a problem this is, especially for our children." The Guardian, *Billie Eilish says watching porn as a child 'destroyed my brain,'* Dec. 14, 2021, https://www.theguardian.com/music/2021/dec/15/billie-eilish-says-watching-porn-gave-her-nightmares-and-destroyed-my-brain; Marc Novicoff, *A Simple Law Is Doing the Impossible. It's Making the Online Porn Industry Retreat,* Politico Magazine, Aug. 8, 2024, https://www.politico.com/news/magazine/2023/08/08/age-law-online-porn-00110148.

[14] Los Angeles Blade, *Pornhub blocks access as new age verification laws take effect*, Jan. 7, 2024, https://www.losangelesblade.com/2024/01/07/pornhub-blocks-access-as-new-age-verification-laws-take-effect/; Dmytro Sashchuk, *Age verification regulations in the United States of America,* Veriff, Nov. 15, 2023, https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america.

Obscenity

Sexual expression which is indecent, but not obscene, is protected by the First Amendment.[15] Material that is obscene does not enjoy the same constitutional protections.[16] In determining whether sexual expression is obscene and therefore outside the protection of the First Amendment, courts may apply the *Miller*[17] test, which evaluates whether:

- The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.
- The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.
- The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[18]

The Florida Supreme Court has determined that the applicable community standard to be used in determining obscenity is the local county standard, explaining that such a standard "permits maximum protection of materials acceptable in cosmopolitan areas while not forcing more conservative areas to accept public depiction of conduct they find obscene."[19]

Material Harmful to Minors

State Definitions

Under state law, "harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest.
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors.
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.[20]

"Sexual conduct" means any actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.[21]

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[15] *Simmons v. State*, 944 So. 2d 317, 323 (Fla. 2006).
[16] *Id.*
[17] *Miller v. California*, 413 U.S. 15, 24 (1973).
[18] *Id.; see also 2025 Emery Hwy, L.L.C. v. Bibb County, Georgia*, 377 F. Supp. 2d 1310, 1332 (M.D. Georgia 2005) (applying the *Miller* test); s. 847.001(12), F.S. (providing that a mother's breastfeeding of her baby is not under any circumstance obscene).
[19] *Johnson v. State*, 351 So. 2d 10, 11 (Fla. 1977).
[20] Section 847.001(7), F.S.
[21] Section 847.001(19), F.S. A mother's breastfeeding of her baby does not under any circumstances constitute "sexual conduct." *Id.*

"Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.[22]

The Florida Supreme Court has found that images in the aid of legitimate scientific or educational purposes, such as a depiction of Michelangelo's *David* transmitted for an art history class, and an illustration of human genitalia intended for a sex education or biology class, are not materials harmful to minors.[23]

Associated Laws

State law prohibits a person from knowingly transmitting, or believing that he or she was transmitting, an image, information, or data that is harmful to minors via an electronic mail to a specific individual known by the defendant to be a minor.[24]

Additionally, several federal laws prohibit access or distribution of harmful or obscene material to a minor:

- Schools and libraries that receive discounts for internet access or internal connections through an E-rate program must:
  - "Certify that they block or filter [i]nternet access" to pictures that are obscene, child pornography, and harmful to minors on computers accessed by minors; and
  - Implement an internet safety policy.[25]
- It is a crime to knowingly use a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors.[26]
- It is a crime to knowingly embed words or digital images into the source code of a website with the intent to deceive a minor into viewing material that is harmful to minors.[27]
- It is a crime to knowingly make any internet communication for commercial purposes that is available to any minor and that includes any material harmful to minors.[28]

Age Verification

Mechanisms

Many industries are currently required to use online age-verification methods, including:

- Alcohol and tobacco.[29]
- Gambling.

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[22] Section 847.001(20), F.S.
[23] *Simmons*, 944 So. 2d at 323.
[24] Section 847.0138, F.S.
[25] Federal Communications Commission, *Children's Internet Protection Act (CIPA),* https://www.fcc.gov/consumers/guides/childrens-internet-protection-act (last visited Jan. 25, 2024).
[26] 18 U.S.C. s. 2252B(b). The definition of "harmful to minors" parallels the *Miller* test for obscenity, as applied to minors. *See* 18 U.S.C. s. 2252B(d).
[27] 18 U.S.C. s. 2252C.
[28] 47 U.S.C. s. 231.
[29] The U.S. Food and Drug Administration (FDA) recommends using independent, third -party age- and identity-verification services that compare customer information against third-party data sources for online sellers of tobacco. FDA, *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)* (April 2020), at 7, available at https://www.fda.gov/media/133880/download.

- Firearms.[30]

Adult websites in the U.S. generally use checkboxes for users to confirm that they are at least 18 years of age. Recently, however, several states and the United Kingdom have enacted laws requiring adult websites to use age-verification measures to block adult content from being accessed by minors.[31]

Additionally, some social media platforms ask for age-identifying information to create new accounts, but such information is not always verified. For example, Facebook requires new users to self-report a birthdate to confirm that they are at least 13 years old. Meta is currently testing new ways to verify age, including through the use of biometrics and online interviews.[32]

There are several ways that internet companies can verify, or attempt to verify, age. Options include using:[33]

- Government identity documents, which generally require users to submit government documents to a third-party company for review.
- Phone records, which generally check users' phones for parental controls.
- Credit score databases, which generally require the user to enter identifying information that is subsequently confirmed through a credit check agency.
- Biometric age estimation, which generally requires a facial analysis to estimate age.
- Credit cards, which generally requires users to supply credit card information for validation.
- Open banking, which generally requires users to log into their own online banking system and give approval for date of birth information to be supplied to a bank-approved, third-party age-verification provider.
- Algorithmic profiling, which generally assesses the likely ages of users based on their online behavior.
- Self-declaration, which generally requires users to check a box or enter a birthdate.
- Zero knowledge proofs, which generally enables users to upload identity documents to privacy servers and securely share encrypted, anonymous "proofs" of age to a company, through a process called "hashing," without actually transmitting the identity documents to the company.[34]

When verifying age online, people usually share personal information, including:

- Full name and location.
- Email or phone number (when using two-factor authorization).

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[30] Jan Stepnov, *What Is an Age Verification System and Why Incorporate It Into Your Business,* Regula, Apr. 21, 2023, https://regulaforensics.com/blog/age-verification-system/.

[31] Masha Borak, *UK introduces Online Safety Bill mandating age verification,* Oct. 27, 2023, https://www.biometricupdate.com/202310/uk-introduces-online-safety-bill-mandating-age-verification; Dmytro Sashchuk, *Age verification regulations in the United States of America,* Veriff, Nov. 15, 2023, https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america.

[32] Meta, *Introducing New Ways to Verify Age on Instagram,* Jun. 23, 2022, https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/.

[33] The Age Verification Providers Association, *How do you check age online?*, https://avpassociation.com/avmethods/ (last visited Jan. 18, 2024).

[34] Bessie Liu, *Aleo blockchain adds zPass, a ZK protocol for verifying identities,* Blockworks, Oct. 26, 2023, https://blockworks.co/news/zkdecentralized-identity-verification.

- Home address.

Identity theft is a potential risk when users reveal this information, and websites can collect information revealed through age-verification processes, and combine it with other data for targeted advertisements or data-sharing with third parties.[35]

However, there are numerous minimally invasive verification techniques that do not require sharing any age-verification information with social media platforms. For example, a trusted third-party could verify the age of a user, and provide a QR code or similar device, to an age-restricted website, thereby establishing the user's age without the platform ever seeing the age-verification documents or the user's identity.[36] Experts assert that age-verification systems have progressed considerably from a generation ago, when the U.S. Supreme Court held that age-verification methods often failed at that task and were too burdensome for law-abiding adults.[37]

Age fabrication is also a widespread issue. For example, underage customers in the U.S. consumed 11.73 percent of all alcoholic drinks sold in the U.S. market in 2016, and 49.8 percent of tobacco and vape shops in California failed to check the identification of underage decoys in 2018.[38]

Laws

As noted earlier, Louisiana, Utah, Arkansas, Mississippi, Montana, North Carolina, Texas, and Virginia have all recently passed legislation to require websites that host obscene material or other material harmful to minors to verify the ages of visitors and block access to minors.[39]

For example, Utah requires a commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on the Internet through a website that contains a substantial portion of such material to perform reasonable age-verification methods to verify the age of an individual attempting to access the material. A commercial entity that violates this provision is liable for damages resulting from a minor's accessing the material, including court costs and reasonable attorney fees.[40]

Some of these state laws have recently been challenged on First Amendment grounds. The law in Texas has been preliminarily enjoined, although the litigation is ongoing; but the suits

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[35] John Reynolds, *Don't risk identity fraud just to play that video game – do this instead,* Aleo, Dec. 28, 2023, https://aleo.org/post/dont-risk-identity-fraud-to-play-that-video-game/.
[36] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation,* Aug. 7, 2023, https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation.
[37] Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, https://broadbandbreakfast.com/2023/11/improved-age-verification-allows-states-to-consider-restricting-social-media/.
[38] Persona, *Age verification system: How to add it into your business,* https://withpersona.com/blog/incorporate-age-verification-intobusiness (last visited Jan. 18, 2024).
[39] Los Angeles Blade, *Pornhub blocks access as new age verification laws take effect,* Jan. 7, 2024, https://www.losangelesblade.com/2024/01/07/pornhub-blocks-access-as-new-age-verification-laws-take-effect/; Dmytro Sashchuk, *Age verification regulations in the United States of America,* Veriff, Nov. 15, 2023, https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america.
[40] UTAH CODE s. 78B-3-1002.

challenging the laws in Utah and Louisiana have been dismissed for lack of jurisdiction, as the laws rely on private enforcement, not state enforcement.[41]

Unlike past legislative efforts to curb online pornography by declaring the websites a danger to public health, the recent laws have had a demonstrable effect against such websites. Pornhub, a large pornography website, has more global users than Amazon or Netflix. In 2019, the last year Pornhub released its data, the site was visited 42 billion times, or 115 million times each day.[42] In response to these bills, Pornhub has prohibited access to all users, including both minors and adults, in Montana, North Carolina, Utah, Arkansas, Mississippi, and Virginia.[43]

Constitutionality of Age Verification

In 1996, the Communications Decency Act (CDA) was enacted by Congress "to protect minors from 'indecent' and 'patently offensive' communications on the Internet" by prohibiting "the knowing transmission of obscene or indecent messages." It allowed websites to defend themselves by either making good faith efforts to restrict such communications to adults, or implementing age-verification measures.[44]

In 1997, in *Reno v. American Civil Liberties Union*,[45] the U.S. Supreme Court held that the provision of the CDA prohibiting the transmission of indecent messages[46] was an unconstitutional, content-based restriction of First Amendment free speech rights. The court also held that requiring adults to prove their age to access certain content was an unconstitutional limit on free speech because there were less restrictive means to curb access to minors, such as filters and parental controls.[47]

In Justice O'Connor's partial dissent, she found that since technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the CDA was unconstitutional. However, she contemplated the possibility that future technological advances may allow for a constitutionally sound age-verification law.[48]

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[41] *See Free Speech Coalition Inc. v. LeBlanc,* No. 2:23-cv-2123 (E.D. La.); *41 Free Speech Coalition, Inc. v. Anderson,* 2023 WL 4899509 (D. Utah 2023); *Free Speech Coalition, Inc. v. Colmenero,* 2023 WL 5655712 (W.D. Texas 2023); Christopher Brown, *Porn Industry Group Loses Challenge to Louisiana Age-Check Law,* Bloomberg Law, Oct. 5, 2023, https://news.bloomberglaw.com/privacy-and-data-security/porn-industry-group-loses-challenge-to-louisiana-age-check-law.

[42] Marc Novicoff, *A Simple Law Is Doing the Impossible. It's Making the Online Porn Industry Retreat,* Politico Magazine, Aug. 8, 2024, https://www.politico.com/news/magazine/2023/08/08/age-law-online-porn-00110148.

[43] Wes Davis, *Pornhub blocks North Carolina and Montana as porn regulation spreads,* The Verge, Jan. 2, 2024, https://www.theverge.com/2024/1/2/24022539/pornhub-blocked-montana-north-carolina-age-verification-law-protest.

[44] Ronald Kahn, *Reno v. American Civil Liberties Union (1997),* Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/.

[45] 521 U.S. 844 (1997).

[46] It is still illegal to transmit obscene messages to minors. U.S. Department of Justice, Criminal Division, *Obscenity,* https://www.justice.gov/criminal/criminal-ceos/obscenity (last visited Jan. 25, 2024).

[47] *Ashcroft v. American Civil Liberties Union,* 542 U.S. 656, 666-68 (2004); Ronald Kahn, *Reno v. American Civil Liberties Union (1997),* Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/.

[48] *Reno,* 521 U.S. at 886-91 (O'Connor concurring in part and dissenting in part). The court also considered overbreadth and vagueness arguments, and determined that the Communications Decency Act of 1996 was too broad and vague. *Id.* at 883-84.

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.[49] FDUTPA was modeled after the Federal Trade Commission Act.[50]

The Department of Legal Affairs or the state attorney's office in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.[51] The state attorney's office may enforce violations of FDUTPA if the violations take place within its jurisdiction. The department has enforcement authority when: the violation is multi-jurisdictional; the state attorney defers to the department in writing; or the state attorney fails to act within 90 days after a written complaint is filed.[52] In certain circumstances, consumers may also file suit through private actions.[53]

The department and the state attorney's office have powers to investigate FDUTPA claims, which include:[54]

- Administering oaths and affirmations.
- Subpoenaing witnesses or matter.
- Collecting evidence.

The department and the state attorney's office may seek the following remedies:[55]

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to $10,000 per willful violation.

FDUTPA may not be applied to certain entities in certain circumstances, including:[56]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services.
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

[49] Section 501.202, F.S.
[50] *See* 15 U.S.C. s. 45; *see also* D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[51] Sections 501.203(2) and 501.207(1)(c) and (2), F.S.; *see also* David J. Federbush, *FDUTPA for Civil Antitrust Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. BAR J. 52 (Dec. 2002), available at https://www.floridabar.org/the-florida-bar-journal/fdutpa-for-civil-antitrust-additional-conduct-party-and-geographic-coverage-state-actions-for-consumer-restitution/ (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida).
[52] Section 501.203(2), F.S.
[53] Section 501.211, F.S.
[54] Section 501.206(1), F.S.
[55] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.
[56] Section 501.212(4), F.S.

III. Effect of Proposed Changes:

The bill creates s. 501.1737, F.S., entitled "Age verification for online access to materials harmful to minors."

Definitions

The bill defines the following terms as used in the bill:

- "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, and any other legally recognized entity.
- "Department" means the Department of Legal Affairs.
- "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means.
- "Material harmful to minors" means any material that:
  - The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
  - Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in state law;[57] and
  - When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
- "News-gathering organization" means any of the following:
  - A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and an employee thereof who can provide documentation of such employment.
  - A radio broadcast station, television broadcast station, cable television operator, or wire service, and an employee thereof who can provide documentation of such employment.
- "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.
- "Reasonable age verification methods" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.
- "Substantial portion" means more than 33.3 percent of total material on a website or application.

Regulations

The bill requires any commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors, to:

- Perform reasonable age verification methods to verify the age of a person attempting to access the material is 18 years of age or older, and prevent access to the material by a person younger than 18 years of age. The reasonable age verification method must be conducted by a nongovernmental, independent, third party not affiliated with the commercial entity.
- Provide an easily accessible link or function on its homepage, landing page, or age verification page to allow a minor user or the confirmed parent or guardian of a minor user to

[57] Section 847.001(19), F.S.

report unauthorized or unlawful access. Within 5 days after such report, the commercial entity must prohibit or block future access by such minor.

The bill provides that a commercial entity or third party that performs reasonable age verification methods may not retain any personal identifying information of the person seeking online access to material harmful to minors any longer than is reasonably necessary to verify the age of the person. Any personal identifying information collected for age verification may not be used for any other purpose.

The bill does not apply to any bona fide news or public interest broadcast, website video, report, or event, and does not affect the rights of news-gathering organizations. Additionally, an internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider does not violate the bill solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the provider's control. This includes transmission, downloading, intermediate storage, or access software, to the extent the provider is not responsible for the creation of the content of the communication which constitutes material harmful to minors.

Enforcement

The bill provides that any violation of the bill's regulations is an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act, solely by the Department of Legal Affairs on behalf of a Florida minor against a commercial entity. If the department has reason to believe that a commercial entity is in violation of any of the regulations described in the bill, the department, as the enforcing authority, may bring an action against the commercial entity for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to the bill, the sections of the Act providing for individual remedies under the Act,[58] and for application of the Act,[59] do not apply. In addition to other remedies under the Act, the department may collect a civil penalty of up to $50,000 per violation.

The bill also provides that any commercial entity that violates the bill by failing to prohibit or block a minor from future access to material harmful to minors, after a report of unauthorized or unlawful access,[60] is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this paragraph must be brought within one year after the violation.

Any action under the bill may only be brought on behalf of, or by, a Florida minor. Additionally, for purposes of bringing an action in accordance with the previous paragraph, a commercial entity that publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors and such website or application is available to be accessed in Florida, is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or

[58] Section 501.211, F.S.
[59] Section 501.212, F.S.
[60] *See* proposed s. 501.1737(2)(b), F.S. (providing that the commercial entity must prohibit or block, within five days after receiving a report from the minor or his or her confirmed parent or guardian, future access by the minor having unauthorized or unlawful access).

carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

Other Available Remedies at Law or Equity

The bill does not preclude any other available remedy at law or equity.

Authorization to Adopt Rules

The department may adopt rules to implement the bill.

Effective Date

The bill takes effect on July 1, 2024.

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:

Requiring commercial entities and their users to use age verification to view certain harmful content presents a complex issue that raises several constitutional concerns. The language in the bill may implicate consideration of a number of constitutional protections.

First Amendment Right to Freedom of Speech

The First Amendment to the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."[61] Generally, "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[62]

[61] U.S. CONST. amend. I.
[62] *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.[63]

Many of the questions regarding the constitutionality of age-verification laws may concern whether such laws are sufficiently narrow to avoid inhibiting more speech than necessary. The degree of tailoring required may vary depending on whether a given law is content-based or content-neutral. In both circumstances, a law's constitutionality depends on several factors, including the:

- Strength of the government's interest.
- Amount of protected speech that the law directly or indirectly restricts.
- Availability of less speech-restrictive alternatives.[64]

Content-neutral regulations on free speech are legitimate if they advance important governmental interests that are not related to suppression of free speech, do so in a way that is substantially related to those interests, and do not substantially burden more speech than necessary to further those interests.[65]

The U.S. Supreme Court regards content-based laws, which limit communication because of the message it conveys, as presumptively unconstitutional.[66] Such a law may be justified only if the government shows that the law is required to promote a compelling state interest and that the least restrictive means have been chosen to further that articulated interest.[67]

As discussed above, sexual expression which is indecent, but not obscene, is protected by the First Amendment.[68] Material that is obscene does not enjoy the same constitutional protections.[69] In determining whether sexual expression is obscene and therefore outside the protection of the First Amendment, courts may apply the *Miller*[70] test, which evaluates whether:

- The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.
- The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.
- The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[71]

[63] U.S. CONST. amend. XIV; *see also* FLA. CONST., art. I.
[64] Eric N. Holmes, Congressional Research Service, *Online Age Verification (Part III): Select Constitutional Issues* (CRS Report No. LSB11022, August 17, 2023), available at https://crsreports.congress.gov/product/pdf/LSB/LSB11022.
[65] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).
[66] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).
[67] *Sable Communications of California, Inc. vs. F.C.C.*, 492 U.S. 115, 126 (1989).
[68] *Simmons*, 944 So. 2d at 323.
[69] *Id.*
[70] *Miller*, 413 U.S. at 24.
[71] *Id.; see also 2025 Emery Hwy, L.L.C.*, 377 F. Supp. 2d at 1332 (applying the *Miller* test); s. 847.001(12), F.S. (providing that a mother's breastfeeding of her baby is not under any circumstance obscene).

In general, the U.S. Supreme Court has held that requiring adults to prove their age to access certain content is an unconstitutional, content-based limit on free speech, when there are less restrictive means to curb access to minors, such as filters and parental controls.[72]

According to Justice O'Connor's *Reno* dissent, because technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the age verification provision was viewed as ultimately unconstitutional; however, she contemplated the possibility that future technological advances may allow for a constitutionally sound age-verification law.[73]

Additionally, in determining whether laws requiring age-verification to access materials harmful to minors online unconstitutionally prohibits free speech, one federal court has noted that while it is:

> uncontested that pornography is generally inappropriate for children,[74] and [that] the state may regulate a minor's access to pornography, ... [any] material that is sexual will likely satisfy [the *Miller*] test, because it is inappropriate for minors, even though it is not obscene for adults. [As such, a]ny prurient material risks being regulated, because it will likely be offensive to minors and lack artistic or scientific value to them. Although this may be permissible when someone knowingly sells material to a minor … it is constitutionally problematic applied to online speech, where the speech is necessarily broadcast widely.[75]

Supremacy Clause

Article VI, Paragraph 2 of the U.S. Constitution, commonly referred to as the Supremacy Clause, establishes that the federal constitution, and federal law generally, take precedence over state laws and constitutions. The Supremacy Clause also prohibits states from interfering with the federal government's exercise of its constitutional powers and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[76]

Section 230 of the federal Communications Decency Act, in part, specifies that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker

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[72] *Reno*, 521 U.S. at 874 (1997); *Ashcroft*, 542 U.S. at 666-68; Ronald Kahn, *Reno v. American Civil Liberties Union (1997)*, Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/.

[73] *Reno*, 521 U.S. at 886-91 (O'Connor concurring in part and dissenting in part). The court also considered overbreadth and vagueness arguments, and determined that the Communications Decency Act of 1996 was too broad and vague. *Id.* at 883-84.

[74] To be obscene, pornography must, at a minimum, "depict or describe patently offensive 'hard core' sexual conduct." *Miller*, 413 U.S. at 27.

[75] *Free Speech Coalition, Inc.*, 2023 WL 5655712 at *10-*13 (W. D. Texas 2023).

[76] Cornell Law School, Legal Information Institute, *Supremacy Clause*, https://www.law.cornell.edu/wex/supremacy_clause (last visited Jan. 17, 2024).

of any information provided by another information content provider"[77] and specifically prohibits all inconsistent causes of action and liability imposed under any state or local law.[78]

State Authority to Regulate to Protect Minors

The U.S. Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."[79] In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material.[80]

Contracts Clause

Article I, Section 10 of the U.S. Constitution prohibits a state from passing any law impairing the obligation of contracts. Article I, Section 10 of the Florida Constitution also prohibits the passage of laws impairing the obligation of contracts. However, the reach of these protections is "limited to preexisting contracts, unlike due process, which extends to future contracts as well."[81]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will result in increased costs for commercial entities operating websites or applications containing a substantial portion of material that is harmful to minors. Such entities will now be required to implement new procedures for age verification, including the use of third-party verification services.

C. Government Sector Impact:

The bill may result in an increase in civil penalties collected by the Department of Legal Affairs. It may also result in an increase of regulatory costs to the department, which has been tasked with enforcing the bill.

[77] 47 U.S.C. s. 230(c)(1).
[78] 47 U.S.C. s. 230(e)(3).
[79] *Sable Communications of California, Inc.*, 492 U.S. at 126.
[80] *Ashcroft,* 542 U.S. at 666; *Cashatt v. State,* 873 So. 2d 430, 434 (Fla. 1st DCA 2004); *but see Erznoznik,* 422 U.S. at 213 (determining that the city's regulation was overly broad).
[81] *Woodstone Ltd. Partn. v. City of Saint Paul, Minnesota*, 2023 WL 3586077, *6 (D. Minnesota May 22, 2023).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the section 501.1737 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.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Fiscal Policy (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 501.1737, Florida Statutes, is created to read:

501.1737 Age verification for online access to materials harmful to minors.—

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

(a) "Commercial entity" includes a corporation, a limited

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liability company, a partnership, a limited partnership, a sole proprietorship, and any other legally recognized entity.

(b) "Department" means the Department of Legal Affairs.

(c) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means.

(d) "Material harmful to minors" means any material that:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;

2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in s. 847.001(19); and

3. When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(e) "News-gathering organization" means any of the following:

1. A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and an employee thereof who can provide documentation of such employment.

2. A radio broadcast station, television broadcast station, cable television operator, or wire service, and an employee thereof who can provide documentation of such employment.

(f) "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.

(g) "Reasonable age verification methods" means a commercially reasonable method used by a government agency or a

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business for the purpose of age verification which is conducted by a nongovernmental, independent, third-party organized under the laws of a state of the United States which:

1. Has its principal place of business in a state of the United States; and

2. Is not owned or controlled by a company formed in a foreign country, a government of a foreign country, or any other entity formed in a foreign country.

(h) "Resident" means a person who lives in this state for more than 6 months of the year.

(i) "Substantial portion" means more than 33.3 percent of total material on a website or application.

(2) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors, must perform reasonable age verification methods to verify the age of a person attempting to access the material is 18 years of age or older and prevent access to the material by a person younger than 18 years of age.

(3) A third party conducting age verification:

(a) May not retain personal identifying information used to verify age once the age of an account holder or a person seeking an account has been verified.

(b) May not use personal identifying information used to verify age for any other purpose.

(c) Must keep anonymous any personal identifying information used to verify age. Such information may not be shared or otherwise communicated to any person.

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(d) Must protect personal identifying information used to verify age from unauthorized or illegal access, destruction, use, modification, or disclosure through reasonable security procedures and practices appropriate to the nature of the personal information.

(4)(a) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and does not affect the rights of a news-gathering organization.

(b) An Internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider does not violate this section solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the provider's control, including transmission, downloading, intermediate storage, or access software, to the extent the provider is not responsible for the creation of the content of the communication which constitutes material harmful to minors.

(5)(a) Any violation of subsection (2) or subsection (3) is deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department on behalf of a resident minor against a commercial entity. If the department has reason to believe that a commercial entity is in violation of subsection (2) or subsection (3), the department, as the enforcing authority, may bring an action against the commercial entity for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to any other remedy under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation of this section.

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(b) A commercial entity that violates subsection (2) for failing to prohibit or block a minor from future access to material harmful to minors after a report of unauthorized or unlawful access is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this paragraph must be brought within 1 year after the violation.

(c) Any action under this subsection may only be brought on behalf of or by a resident minor.

(6) For purposes of bringing an action under subsection (5), a commercial entity that publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors and such website or application is available to be accessed in this state, is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(7) This section does not preclude any other available remedy at law or equity.

(8) The department may adopt rules to implement this section.

Section 2. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are

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severable.

Section 3. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to online protections for minors; creating s. 501.1737, F.S.; defining terms; requiring a commercial entity that publishes or distributes material harmful to minors on a website or application that contains a substantial portion of such material to perform reasonable age verification methods and prevent access to such material by minors; providing requirements for a third party conducting age verification; providing applicability; authorizing the Department of Legal Affairs to bring an action for violations under the Florida Deceptive and Unfair Trade Practices Act; providing civil penalties; providing for private causes of action; providing that certain commercial entities are subject to the jurisdiction of state courts; providing construction; authorizing the department to adopt rules; providing for severability; providing an effective date.

A bill to be entitled

An act relating to online access to materials harmful to minors; creating s. 501.1737, F.S.; providing definitions; requiring a commercial entity that publishes or distributes material harmful to minors on a website or application that contains a substantial portion of such material to perform reasonable age verification methods, prevent access to such material by minors, and provide methods for reporting unauthorized or unlawful access; prohibiting the retention of certain personal identifying information; providing applicability and construction; authorizing the Department of Legal Affairs to bring an action for violations under the Florida Deceptive and Unfair Trade Practices Act; providing civil penalties; providing for private causes of action; providing that certain commercial entities are subject to the jurisdiction of state courts; providing construction; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 501.1737, Florida Statutes, is created to read:

FLORIDA HOUSE OF REPRESENTATIVES

CS/CS/HB 3 2024

501.1737 Age verification for online access to materials harmful to minors.—

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

(a) "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, and any other legally recognized entity.

(b) "Department" means the Department of Legal Affairs.

(c) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means.

(d) "Material harmful to minors" means any material that:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;

2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in s. 847.001(19); and

3. When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(e) "News-gathering organization" means any of the following:

1. A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and an employee thereof who can provide documentation of such employment.

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

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2. A radio broadcast station, television broadcast station, cable television operator, or wire service, and an employee thereof who can provide documentation of such employment.

(f) "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.

(g) "Reasonable age verification methods" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.

(h) "Substantial portion" means more than 33.3 percent of total material on a website or application.

(2) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors, must:

(a) Perform reasonable age verification methods to verify the age of a person attempting to access the material is 18 years of age or older and prevent access to the material by a person younger than 18 years of age. The reasonable age verification method must be conducted by a nongovernmental, independent, third-party not affiliated with the commercial entity.

(b) Provide an easily accessible link or function on its

homepage, landing page, or age verification page to allow a minor user or the confirmed parent or guardian of a minor user to report unauthorized or unlawful access. Within 5 days after such report, the commercial entity must prohibit or block future access by such minor.

(3) A commercial entity or third party that performs reasonable age verification methods may not retain any personal identifying information of the person seeking online access to material harmful to minors any longer than is reasonably necessary to verify the age of the person. Any personal identifying information collected for age verification may not be used for any other purpose.

(4)(a) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and does not affect the rights of a news-gathering organization.

(b) An Internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider does not violate this section solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the provider's control, including transmission, downloading, intermediate storage, or access software, to the extent the provider is not responsible for the creation of the content of the communication which constitutes material harmful to minors.

(5)(a) Any violation of subsection (2) or subsection (3)

is an unfair and deceptive trade practice actionable under part II of this chapter solely by the department on behalf of a Florida minor against a commercial entity. If the department has reason to believe that a commercial entity is in violation of subsection (2) or subsection (3), the department, as the enforcing authority, may bring an action against the commercial entity for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to any other remedy under part II of this chapter, the department may collect a civil penalty of up to $50,000 per violation of this section.

(b) A commercial entity that violates subsection (2) for failing to prohibit or block a minor from future access to material harmful to minors after a report of unauthorized or unlawful access is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this paragraph must be brought within 1 year after the violation.

(c) Any action under this subsection may only be brought on behalf of or by a Florida minor.

(6) For purposes of bringing an action under subsection (5), a commercial entity that publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful

to minors and such website or application is available to be accessed in Florida, is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(7) This section does not preclude any other available remedy at law or equity.

(8) The department may adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2024.

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 Fiscal Policy

BILL:	CS/HB 1377
INTRODUCER:	Fiscal Policy Committee; State Affairs Committee and Representatives Sirois and McFarland
SUBJECT:	Public Records/Investigations by the Department of Legal Affairs
DATE:	February 13, 2024 REVISED: 2/16/24

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Yeatman	FP	**Fav/1 amendment**
2.				

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

CS/HB 1377 exempts from public records copying and inspection requirements certain information received by the Department of Legal Affairs in connection with its enforcement obligations under HB 1[1] or similar legislation during the 2024 Regular Session.

Specifically, the bill exempts, from the public records requirements in s. 119.07(1), F.S. and Art. I, s. 24(a) of the State Constitution, all information held by the department, either pursuant to a notification of violation of the new statute created by HB 1,[2] or pursuant to an investigation of a violation of the new statute, until such time as the investigation is completed or ceases to be active.

The bill provides that during an active investigation, certain information made confidential and exempt by the bill may be disclosed by the department. It also provides that upon completion of an investigation, or once an investigation ceases to be active, certain information held by the department must remain confidential and exempt from the public disclosure requirements, including the "proprietary information" of social media platforms as defined in the bill.

[1] The purpose of HB 1 is to regulate social media platforms and their use by minors.
[2] Section 501.1736, F.S.

The bill provides a statement of public necessity as required by the State Constitution. Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on the same date that HB 1 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records – Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[3] 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.[4]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 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.[5] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[6] Lastly, ch. 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.[7]

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

> [a]ll 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.

[3] FLA. CONST. art. I, s. 24(a).
[4] *Id*. *See also*, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).
[5] *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 2, (2022-2024).
[6] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[7] 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."

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."[8]

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.[9] A violation of the Public Records Act may result in civil or criminal liability.[10]

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.[11] 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.[12]

General exemptions from the public records requirements are contained in the Public Records Act.[13] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[14]

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*.[15] 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.[16] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[17]

[8] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[9] Section 119.07(1)(a), F.S.
[10] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[11] FLA. CONST. art. I, s. 24(c).
[12] *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).
[13] *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).
[14] *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).
[15] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[16] *Id*.
[17] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[18] (the Act), prescribe a legislative review process for newly created or substantially amended[19] public records or open meetings exemptions, with specified exceptions.[20] The Act requires the repeal of such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[21]

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.[22] 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:

- 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;[23]
- 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;[24] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[25]

The Act also requires specified questions to be considered during the review process.[26] 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 again required.[27] 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

[18] Section 119.15, F.S.
[19] 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.
[20] 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.
[21] Section 119.15(3), F.S.
[22] Section 119.15(6)(b), F.S.
[23] Section 119.15(6)(b)1., F.S.
[24] Section 119.15(6)(b)2., F.S.
[25] Section 119.15(6)(b)3., F.S.
[26] 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?

[27] *See generally* s. 119.15, F.S.

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.[28]

Public Records Exemptions for Active Criminal Intelligence Information and Criminal Investigative Information

Provisions in s. 119.071(2)(c), F.S., exempt from public disclosure active criminal intelligence information and criminal investigative information.

"Criminal intelligence information" means 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.[29] Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.[30]

"Criminal investigative information" means 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.[31] Criminal intelligence information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.[32]

Additionally, criminal intelligence and criminal investigative information are considered "active" while such information is directly related to pending prosecutions or appeals,[33] but not if relating to cases which are barred from prosecution under an applicable statute of limitation.[34]

Six categories of criminal intelligence and criminal investigative information are expressly excluded from the exemption.[35] These categories are:[36]

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime, except as otherwise provided.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided, and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a

[28] Section 119.15(7), F.S.
[29] Section 119.011(3)(a), F.S.
[30] Section 119.011(3)(d)1., F.S.
[31] Section 119.011(3)(b), F.S.
[32] Section 119.011(3)(d)2., F.S.
[33] *Id.*
[34] *See, e.g.,* s. 775.15, F.S.
[35] *City of Miami v. Metropolitan Dade County,* 745 F. Supp. 683, 686 (S.D. Fla. 1990).
[36] Section 119.011(3)(c), F.S.

confidential manner and exempt from the enumerated provision[37] until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments, except[38] as provided.

Under the Public Records Act, public records of a governmental entity do not transform into protected criminal investigative information merely because they have been transferred to a law enforcement agency.[39]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 501.1736, F.S., as created by HB 1 or similar legislation during the 2024 Regular Session, to include a new subsection (9) exempting all information held by the Department of Legal Affairs, either pursuant to a notification of violation of s. 501.1736, F.S., or an investigation of a violation of s. 501.1736, F.S., from the public disclosure requirements[40] until such time as the investigation is completed or ceases to be active. This exemption must be construed in conformity with s. 119.071(2)(c), F.S.

The bill provides that during an active investigation, information made confidential and exempt pursuant to the bill may be disclosed by the department:
- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast, if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of an improper use or disposal of customer records, except that information made confidential and exempt by the following paragraph may not be released pursuant to this paragraph.
- To another governmental entity in the furtherance of its official duties and responsibilities.

The bill also provides that upon completion of an investigation, or once an investigation ceases to be active, the following information held by the department must remain confidential and exempt from the public disclosure requirements:
- Information that is otherwise confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
- Personal identifying information.
- A computer forensic report.
- Information that would otherwise reveal weaknesses in the data security of a social media platform.
- Information that would disclose the proprietary information of a social media platform.

For purposes of s. 501.1736(9), F.S., the term "proprietary information" means information that:

[37] Section 119.07(1), F.S.
[38] Section 905.26, F.S.
[39] *State Attorney's Office of Seventeenth Judicial Circuit v. Cable News Network, Inc.,* 251 So. 3d 205, 212 (Fla. 4th DCA 2018).
[40] *See* s. 119.07(1), F.S.; FLA. CONST. art I, s. 24(a).

- Is owned or controlled by the social media platform.
- Is intended to be private and is treated by the social media platform as private because disclosure would harm the social media platform or its business operations.
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.
- Reveals competitive interests, the disclosure of which would impair the competitive advantage of the social media platform which is the subject of the information.

The bill provides that s. 501.1736(9), F.S., is subject to the Open Government Sunset Review Act[41] and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of the bill provides the public necessity statement, as required by the State Constitution.

The statement provides that it is a public necessity that all information held by the department pursuant to a notification of a violation of s. 501.1736, F.S., or an investigation of a violation of that section, be made confidential and exempt from the public disclosure requirements for the following reasons:

- A notification of a violation of s. 501.1736, F.S., may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer the statute. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.
- Release of information that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information; thus, clarifying that any protections currently afforded to such information are not removed.
- An investigation of a violation of s. 501.1736, F.S., is likely to result in the gathering of sensitive personal identifying information, which could include identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject families to possible privacy violations, as it would reveal information of a sensitive personal nature.
- Notices received by the department and information generated during an investigation of a violation of s. 501.1736, F.S., are likely to contain proprietary information. Such information derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information through a public records request could destroy the value of the proprietary information and cause a financial loss to the social media platform. Release of such information could give business competitors an unfair advantage.

[41] *See* s. 119.15, F.S.

- Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a social media platform. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the social media platform and be used to harm the social media platform and clients.
- The harm that may result from the release of information held by the department pursuant to a notification or investigation of a violation of s. 501.1736, F.S., could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3 of the bill provides that it takes effect on the same date that HB 1 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. HB 1 takes effect July 1, 2024.

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 all information received by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.1736, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of the new law, until such time as the investigation is completed or ceases to be active; thus, the bill requires 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.

Breadth 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 new law is to regulate social media platforms and their use by minors.

This bill exempts only information received by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.1736, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of the new law, until such time as related investigations are completed or cease to be active, 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:

This bill may have a minimal negative fiscal impact on the Department of Legal Affairs personnel, because staff responsible for complying with public record requests may require training related to the new public record exemption. However, the costs should be absorbed as part of the day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.1736 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.)

None.

B. Amendments:

Barcode 698496 by Fiscal Policy on February 15, 2024:
The amendment combines the exemptions from public records requirements found in CS/HB 1377 (for s. 501.1736, F.S., regarding social media use for minors) and CS/CS/HB 1491 (for s. 501. 1737, F.S., regarding age verification for online access to materials harmful to minors) into a single bill. (WITH TITLE AMENDMENT)

698496

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2024	.	
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The Committee on Fiscal Policy (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsection (9) of section 501.1736, Florida Statutes, as created by HB 1 or similar legislation, 2024 Regular Session, is redesignated as subsection (10), and a new subsection (9) is added to that section, to read:

501.1736 Social media use for minors.—

(9)(a) All information held by the department pursuant to a

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notification of a violation under this section or an investigation of a violation of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information held by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information that is otherwise confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Personal identifying information.

3. A computer forensic report.

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4. Information that would otherwise reveal weaknesses in the data security of a social media platform.

5. Information that would disclose the proprietary information of a social media platform.

(d) For purposes of this section, the term "proprietary information" means information that:

1. Is owned or controlled by the social media platform.

2. Is intended to be private and is treated by the social media platform as private because disclosure would harm the social media platform or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Reveals competitive interests, the disclosure of which would impair the competitive advantage of the social media platform that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information held by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1736, Florida Statutes, or an investigation of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the

State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1736, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.1736, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information, thus clarifying that any protections currently afforded to such information are not removed.

(3) An investigation of a violation of s. 501.1736, Florida Statutes, is likely to result in the gathering of sensitive personal identifying information, which could include identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject families to possible privacy violations, as it would reveal information of a sensitive personal nature.

(4) Notices received by the department and information generated during an investigation of a violation of s. 501.1736, Florida Statutes, are likely to contain proprietary information. Such information derives independent, economic value, actual or potential, from being generally unknown to, and not readily

ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information through a public records request could destroy the value of the proprietary information and cause a financial loss to the social media platform. Release of such information could give business competitors an unfair advantage.

(5) Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a social media platform. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the social media platform and be used to harm the social media platform and its clients.

(6) The harm that may result from the release of information held by the department pursuant to a notification or investigation of a violation of s. 501.1736, Florida Statutes, could impair the effective and efficient administration of the investigation and thus outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. Present subsection (8) of section 501.1737, Florida Statutes, as created by HB 1 or similar legislation, 2024 Regular Session, is redesignated as subsection (9), and a new subsection (8) is added to that section, to read:

501.1737 Age verification for online access to materials harmful to minors.—

(8)(a) All information held by the department pursuant to a notification of a violation under this section or an investigation of a violation of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person whom the department believes to be a victim of an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information held by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information that is otherwise confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution.

2. Personal identifying information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of the commercial entity.

5. Information that would disclose the proprietary information of the commercial entity.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the commercial entity.

2. Is intended to be private and is treated by the commercial entity as private because disclosure would harm the commercial entity or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Reveals competitive interests, the disclosure of which would impair the competitive advantage of the commercial entity that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. The Legislature finds that it is a public necessity that all information held by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1737, Florida Statutes, or an investigation of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1737, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart

the investigation and impair the ability of the department to effectively and efficiently administer s. 501.1737, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information, thus clarifying that any protections currently afforded to that information are not removed.

(3) An investigation of a violation of s. 501.1737, Florida Statutes, is likely to result in the gathering of sensitive personal identifying information, which could include identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject individuals to possible privacy violations, as it would reveal information of a sensitive personal nature.

(4) Notices received by the department and information generated during an investigation of a violation of s. 501.1737, Florida Statutes, are likely to contain proprietary information. Such information derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information through a public records request could destroy the value of the proprietary information and cause a

financial loss to the commercial entity. Release of such information could give business competitors an unfair advantage.

(5) Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of the commercial entity. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the commercial entity and be used to harm the commercial entity and its clients.

(6) The harm that may result from the release of information held by the department pursuant to a notification or investigation by the department of a violation of s. 501.1737, Florida Statutes, could impair the effective and efficient administration of the investigation and thus outweighs the public benefit that may be derived from the disclosure of the information.

Section 5. This act shall take effect on the same date that HB 1 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; amending s. 501.1736, F.S.; providing an exemption from public records requirements for information relating to


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investigations by the Department of Legal Affairs of certain social media violations; authorizing the department to disclose such information for specified purposes; defining the term "proprietary information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; amending s. 501.1737, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs of certain age verification violations; authorizing the department to disclose such information for specified purposes; defining the term "proprietary information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

262170

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/16/2024	.	
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The Committee on Fiscal Policy (Hutson) recommended the following:

Senate Amendment (with directory amendment)

Delete line 20
and insert:
(10)(a) All information held by the department pursuant to

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 15 - 18
and insert:

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Section 1. Present subsection (10) of section 501.1736, Florida Statutes, as created by HB 1 or similar legislation, 2024 Regular Session, is redesignated as subsection (11), and a new subsection (10) is added to that section, to read:

A bill to be entitled

An act relating to public records; amending s. 501.1736, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs of certain social media violations; authorizing the department to disclose such information for specified purposes; providing a definition; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (9) of section 501.1736, Florida Statutes, as created by HB 1 or similar legislation, 2024 Regular Session, is renumbered as subsection (10) and a new subsection (9) is added to that section to read:

501.1736 Social media use for minors.—

(9)(a) All information held by the department pursuant to a notification of a violation under this section or an investigation of a violation of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in

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conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information held by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information that is otherwise confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Personal identifying information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in

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

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the data security of a social media platform.

5. Information that would disclose the proprietary information of a social media platform.

(d) For purposes of this section, the term "proprietary information" means information that:

1. Is owned or controlled by the social media platform.

2. Is intended to be private and is treated by the social media platform as private because disclosure would harm the social media platform or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Reveals competitive interests, the disclosure of which would impair the competitive advantage of the social media platform who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information held by the Department of Legal Affairs pursuant to a notification of a violation of s.

501.1736, Florida Statutes, or an investigation of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1736, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.1736, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information; thus, clarifying that any protections currently afforded to such information are not removed.

(3) An investigation of a violation of s. 501.1736, Florida Statutes, is likely to result in the gathering of sensitive personal identifying information, which could include identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject

families to possible privacy violations, as it would reveal information of a sensitive personal nature.

(4) Notices received by the department and information generated during an investigation of a violation of s. 501.1736, Florida Statutes, are likely to contain proprietary information. Such information derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information through a public records request could destroy the value of the proprietary information and cause a financial loss to the social media platform. Release of such information could give business competitors an unfair advantage.

(5) Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a social media platform. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the social media platform and be used to harm the social media platform and clients.

(6) The harm that may result from the release of information held by the department pursuant to a notification or investigation of a violation of s. 501.1736, Florida Statutes, could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be

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derived from the disclosure of the information.

Section 3. This act shall take effect on the same date that HB 1 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2024	.	
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	.	

The Committee on Fiscal Policy (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsection (9) of section 501.1736, Florida Statutes, as created by HB 1 or similar legislation, 2024 Regular Session, is redesignated as subsection (10), and a new subsection (9) is added to that section, to read:

501.1736 Social media use for minors.—

(9)(a) All information held by the department pursuant to a

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notification of a violation under this section or an investigation of a violation of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information held by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information that is otherwise confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Personal identifying information.

3. A computer forensic report.

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4. Information that would otherwise reveal weaknesses in the data security of a social media platform.

5. Information that would disclose the proprietary information of a social media platform.

(d) For purposes of this section, the term "proprietary information" means information that:

1. Is owned or controlled by the social media platform.

2. Is intended to be private and is treated by the social media platform as private because disclosure would harm the social media platform or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Reveals competitive interests, the disclosure of which would impair the competitive advantage of the social media platform that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information held by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1736, Florida Statutes, or an investigation of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the

State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1736, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.1736, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information, thus clarifying that any protections currently afforded to such information are not removed.

(3) An investigation of a violation of s. 501.1736, Florida Statutes, is likely to result in the gathering of sensitive personal identifying information, which could include identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject families to possible privacy violations, as it would reveal information of a sensitive personal nature.

(4) Notices received by the department and information generated during an investigation of a violation of s. 501.1736, Florida Statutes, are likely to contain proprietary information. Such information derives independent, economic value, actual or potential, from being generally unknown to, and not readily

ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information through a public records request could destroy the value of the proprietary information and cause a financial loss to the social media platform. Release of such information could give business competitors an unfair advantage.

(5) Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a social media platform. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the social media platform and be used to harm the social media platform and its clients.

(6) The harm that may result from the release of information held by the department pursuant to a notification or investigation of a violation of s. 501.1736, Florida Statutes, could impair the effective and efficient administration of the investigation and thus outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. Present subsection (8) of section 501.1737, Florida Statutes, as created by HB 1 or similar legislation, 2024 Regular Session, is redesignated as subsection (9), and a new subsection (8) is added to that section, to read:

501.1737 Age verification for online access to materials harmful to minors.—

(8)(a) All information held by the department pursuant to a notification of a violation under this section or an investigation of a violation of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person whom the department believes to be a victim of an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information held by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information that is otherwise confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution.

2. Personal identifying information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of the commercial entity.

5. Information that would disclose the proprietary information of the commercial entity.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the commercial entity.

2. Is intended to be private and is treated by the commercial entity as private because disclosure would harm the commercial entity or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Reveals competitive interests, the disclosure of which would impair the competitive advantage of the commercial entity that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. The Legislature finds that it is a public necessity that all information held by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1737, Florida Statutes, or an investigation of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1737, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart

the investigation and impair the ability of the department to effectively and efficiently administer s. 501.1737, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information, thus clarifying that any protections currently afforded to that information are not removed.

(3) An investigation of a violation of s. 501.1737, Florida Statutes, is likely to result in the gathering of sensitive personal identifying information, which could include identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject individuals to possible privacy violations, as it would reveal information of a sensitive personal nature.

(4) Notices received by the department and information generated during an investigation of a violation of s. 501.1737, Florida Statutes, are likely to contain proprietary information. Such information derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information through a public records request could destroy the value of the proprietary information and cause a

financial loss to the commercial entity. Release of such information could give business competitors an unfair advantage.

(5) Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of the commercial entity. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the commercial entity and be used to harm the commercial entity and its clients.

(6) The harm that may result from the release of information held by the department pursuant to a notification or investigation by the department of a violation of s. 501.1737, Florida Statutes, could impair the effective and efficient administration of the investigation and thus outweighs the public benefit that may be derived from the disclosure of the information.

Section 5. This act shall take effect on the same date that HB 1 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; amending s. 501.1736, F.S.; providing an exemption from public records requirements for information relating to


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investigations by the Department of Legal Affairs of certain social media violations; authorizing the department to disclose such information for specified purposes; defining the term "proprietary information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; amending s. 501.1737, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs of certain age verification violations; authorizing the department to disclose such information for specified purposes; defining the term "proprietary information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/CS/HB 1491
INTRODUCER:	Regulatory Reform & Economic Development Subcommittee; State Affairs Committee; Representatives Tramont and Overdorf
SUBJECT:	Public Records/Investigations by the Department of Legal Affairs
DATE:	February 13, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Yeatman	FP	**Pre-meeting**
2.				

I. Summary:

CS/CS/HB 1491 exempts from public records copying and inspection requirements certain information received by the Department of Legal Affairs in connection with its enforcement obligations under HB 3[1] or similar legislation during the 2024 Regular Session.

Specifically, the bill exempts, from the public records requirements in s. 119.07(1), F.S. and Art. I, s. 24(a) of the State Constitution, all information held by the department, either pursuant to a notification of violation of the new statute created by HB 3,[2] or an investigation of a violation of the new statute, until such time as the investigation is completed or ceases to be active.

The bill provides that during an active investigation, certain information made confidential and exempt by the bill may be disclosed by the department. It also provides that upon completion of an investigation, or once an investigation ceases to be active, certain information received by the department must remain confidential and exempt from the public disclosure requirements, including the "proprietary information" of commercial entities as defined in the bill.

The bill provides a statement of public necessity as required by the State Constitution. Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on the same date that HB 3 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

[1] The purpose of HB 3 is to prevent persons younger than 18 from accessing material harmful to minors on websites or applications.

[2] Section 501.1737, F.S.

II. Present Situation:

Access to Public Records – Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[3] 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.[4]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 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.[5] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[6] Lastly, ch. 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.[7]

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

> [a]ll 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."[8]

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[3] FLA. CONST. art. I, s. 24(a).
[4] *Id*. *See also*, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).
[5] *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 2, (2022-2024).
[6] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[7] 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."
[8] *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.[9] A violation of the Public Records Act may result in civil or criminal liability.[10]

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.[11] 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.[12]

General exemptions from the public records requirements are contained in the Public Records Act.[13] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[14]

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*.[15] 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.[16] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[17]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[18] (the Act), prescribe a legislative review process for newly created or substantially amended[19] public records or open meetings exemptions, with specified exceptions.[20] The Act requires the repeal of

[9] Section 119.07(1)(a), F.S.
[10] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[11] FLA. CONST. art. I, s. 24(c).
[12] *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).
[13] *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).
[14] *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).
[15] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[16] *Id*.
[17] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[18] Section 119.15, F.S.
[19] 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.
[20] 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 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[21]

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.[22] 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:

- 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;[23]
- 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;[24] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[25]

The Act also requires specified questions to be considered during the review process.[26] 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 again required.[27] 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.[28]

Public Records Exemptions for Active Criminal Intelligence Information and Criminal Investigative Information

Provisions in s. 119.071(2)(c), F.S., exempt from public disclosure active criminal intelligence information and criminal investigative information.

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[21] Section 119.15(3), F.S.
[22] Section 119.15(6)(b), F.S.
[23] Section 119.15(6)(b)1., F.S.
[24] Section 119.15(6)(b)2., F.S.
[25] Section 119.15(6)(b)3., F.S.
[26] 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?

[27] *See generally* s. 119.15, F.S.
[28] Section 119.15(7), F.S.

"Criminal intelligence information" means 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.[29] Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.[30]

"Criminal investigative information" means 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.[31] Criminal intelligence information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.[32]

Additionally, criminal intelligence and criminal investigative information are considered "active" while such information is directly related to pending prosecutions or appeals,[33] but not if relating to cases which are barred from prosecution under an applicable statute of limitation.[34]

Six categories of criminal intelligence and criminal investigative information are expressly excluded from the exemption.[35] These categories are:[36]

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime, except as otherwise provided.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided, and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the enumerated provision[37] until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments, except[38] as provided.

[29] Section 119.011(3)(a), F.S.
[30] Section 119.011(3)(d)1., F.S.
[31] Section 119.011(3)(b), F.S.
[32] Section 119.011(3)(d)2., F.S.
[33] *Id.*
[34] *See, e.g.*, s. 775.15, F.S.
[35] *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683, 686 (S.D. Fla. 1990).
[36] Section 119.011(3)(c), F.S.
[37] Section 119.07(1), F.S.
[38] Section 905.26, F.S.

Under the Public Records Act, public records of a governmental entity do not transform into protected criminal investigative information merely because they have been transferred to a law enforcement agency.[39]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 501.1737, F.S., as created by HB 3 to include a new subsection (8) exempting all information held by the Department of Legal Affairs pursuant to a notification of violation of s. 501.1737, F.S., or an investigation of a violation of s. 501.1737, F.S., from the public disclosure requirements[40] until such time as the investigation is completed or ceases to be active. This exemption must be construed in conformity with s. 119.071(2)(c), F.S.

The bill provides that during an active investigation, information made confidential and exempt pursuant to the bill may be disclosed by the department:

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast, if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of an improper use or disposal of customer records, except that information made confidential and exempt by the following paragraph may not be released pursuant to this paragraph.
- To another governmental entity in the furtherance of its official duties and responsibilities.

The bill also provides that upon completion of an investigation, or once an investigation ceases to be active, the following information held by the department must remain confidential and exempt from the public disclosure requirements:

- Information that is otherwise confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution.
- Personal identifying information.
- A computer forensic report.
- Information that would otherwise reveal weaknesses in the data security of the commercial entity.
- Information that would disclose the proprietary information of the commercial entity.

For purposes of s. 501.1737(8), F.S., the term "proprietary information" means information that:

- Is owned or controlled by the commercial entity.
- Is intended to be private and is treated by the commercial entity as private because disclosure would harm the commercial entity or its business operations.
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.
- Reveals competitive interests, the disclosure of which would impair the competitive advantage of the commercial entity who is the subject of the information.

[39] *State Attorney's Office of Seventeenth Judicial Circuit v. Cable News Network, Inc.,* 251 So. 3d 205, 212 (Fla. 4th DCA 2018).
[40] *See* s. 119.07(1), F.S.; FLA. CONST. art I, s. 24(a).

The bill provides that s. 501.1737(8), F.S., is subject to the Open Government Sunset Review Act[41] and will stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of the bill provides the public necessity statement, as required by the State Constitution.

The statement provides that it is a public necessity that all information held by the department pursuant to a notification of a violation of s. 501.1737, F.S., or an investigation of a violation of that section, be made confidential and exempt from the public disclosure requirements for the following reasons:

- A notification of a violation of s. 501.1737, F.S., may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer the statute. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.
- Release of information that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information; thus, clarifying that any protections currently afforded to that information are not removed.
- An investigation of a violation of s. 501.1737, F.S., is likely to result in the gathering of sensitive personal identifying information, which could include identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject individuals to possible privacy violations, as it would reveal information of a sensitive personal nature.
- Notices received by the department and information generated during an investigation of a violation of s. 501.1737, F.S., are likely to contain proprietary information. Such information derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information through a public records request could destroy the value of the proprietary information and cause a financial loss to the commercial entity. Release of such information could give business competitors an unfair advantage.
- Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a commercial entity. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the commercial entity and be used to harm the commercial entity and clients.
- The harm that may result from the release of information held by the department pursuant to a notification or investigation by the department of a violation of s. 501.1737, F.S., could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

[41] *See* s. 119.15, F.S.

Section 3 of the bill provides that it takes effect on the same date that HB 3 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. HB 3 takes effect July 1, 2024.

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 all information held by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.1737, F.S., or an investigation by the department of a violation of the new law, until such time as the investigation is completed or ceases to be active; thus, the bill requires 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.

Breadth 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 new law is to prevent persons younger than 18 from accessing material harmful to minors on websites or applications. This bill exempts only information held by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.1737, F.S., or an investigation by the department of a violation of the new law, until such time as related investigations are completed or cease to be active, 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:

This bill may have a minimal negative fiscal impact on the Department of Legal Affairs personnel, because staff responsible for complying with public record requests may require training related to the new public record exemption. However, the costs should be absorbed as part of the day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.1737 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.)

None.

B. Amendments:

None.

A bill to be entitled

An act relating to public records; amending s. 501.1737, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs of certain age verification violations; authorizing the department to disclose such information for specified purposes; providing a definition; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) of section 501.1737, Florida Statutes, as created by HB 3 or similar legislation, 2024 Regular Session, is renumbered as subsection (9), and a new subsection (8) is added to that section, to read:

501.1737 Age verification for online access to materials harmful to minors.—

(8)(a) All information held by the department pursuant to a notification of a violation under this section or an investigation of a violation of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed

FLORIDA HOUSE OF REPRESENTATIVES

CS/CS/HB 1491 2024

or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person who the department believes to be a victim of an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information held by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information that is otherwise confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution.

2. Personal identifying information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in

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

hb1491-02-c2

the data security of the commercial entity.

5. Information that would disclose the proprietary information of the commercial entity.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the commercial entity.

2. Is intended to be private and is treated by the commercial entity as private because disclosure would harm the commercial entity or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Reveals competitive interests, the disclosure of which would impair the competitive advantage of the commercial entity who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information held by the Department of Legal Affairs pursuant to a notification of a violation of s.

501.1737, Florida Statutes, or an investigation of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1737, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.1737, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information that is otherwise confidential or exempt from public records requirements once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information; thus, clarifying that any protections currently afforded to that information are not removed.

(3) An investigation of a violation of s. 501.1737, Florida Statutes, is likely to result in the gathering of sensitive personal identifying information, which could include identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject

individuals to possible privacy violations, as it would reveal information of a sensitive personal nature.

(4) Notices received by the department and information generated during an investigation of a violation of s. 501.1737, Florida Statutes, are likely to contain proprietary information. Such information derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information through a public records request could destroy the value of the proprietary information and cause a financial loss to the commercial entity. Release of such information could give business competitors an unfair advantage.

(5) Information held by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of the commercial entity. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the commercial entity and be used to harm the commercial entity and clients.

(6) The harm that may result from the release of information held by the department pursuant to a notification or investigation by the department of a violation of s. 501.1737, Florida Statutes, could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the

information.

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

THE FLORIDA SENATE
SENATOR NICK DICEGLIE
District 18

Kathleen Passidomo
President of the Senate

Dennis Baxley
President Pro Tempore

February 15, 2023

Dear Chair Hutson,

Senator DiCeglie will be unable to attend Fiscal Policy this afternoon due to a work related commitment in district. Please let us know if we can be of any help to the chair or the committee, thank you.

Sincerely,

Nick DiCeglie

State Senator, District 18

Proudly Serving Pinellas County

Transportation Committee, Chair ~ Banking and Insurance Committee, Vice Chair ~
Fiscal Policy Committee ~ Judiciary Committee ~
Rules Committee ~ Joint Legislative Auditing Committee

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CLAY YARBOROUGH
4th District

COMMITTEES:
Judiciary, *Chair*
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Transportation, Tourism, and Economic Development
Criminal Justice
Education Postsecondary
Education Pre-K -12
Fiscal Policy
Rules

JOINT COMMITTEES:
Joint Committee on Public Counsel Oversight

February 15, 2024

Chair Travis Hutson
416 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Chair Hutson,

I would like to request an excusal from today's Fiscal Policy committee meeting.

Thank you for your consideration of this request.

Regards,

Clay Yarborough

Clay Yarborough

REPLY TO:
❒ 1615 Huffingham Road, Suite 1, Jacksonville, Florida 32216 (904) 723-2034
❒ 308 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Committee on Fiscal Policy **Judge:**

Started: 2/15/2024 12:03:02 PM
Ends: 2/15/2024 4:48:13 PM Length: 04:45:12

12:03:01 PM Chair Hutson calls meeting to order
12:03:08 PM Roll call
12:03:10 PM Quorum is present
12:03:13 PM Pledge of Allegiance
12:04:12 PM Chair Hutson makes opening remarks
12:04:52 PM Tab 1, CS/SB 84 on Jimmy Buffett Highway by Book
12:05:19 PM Senator Book explains the bill
12:06:19 PM Savannah Buffett
12:09:24 PM Senator Book closes on the bill
12:09:58 PM Roll call
12:10:35 PM Tab 27 CS/SB 1604 on Digital Voyeurism by Book
12:12:13 PM Senator Book explains the bill
12:12:45 PM Amendment #284842 by Book
12:12:56 PM Senator Book explains the amendment
12:13:17 PM Chair Hutson reports the amendment
12:13:37 PM Chair Hutson recognizes public appearance
12:13:45 PM Senator Book waives close
12:13:51 PM Roll call
12:14:32 PM Tab 9, CS/SB 532 on Securities by Brodeur
12:15:06 PM Senator Brodeur explains the bill
12:15:12 PM Amendment #793480 by Brodeur
12:15:27 PM Senator Brodeur explains the amendment
12:16:08 PM Chair Hutson recognizes public appearance
12:16:17 PM Chair Hutson reports amendment
12:16:46 PM Senator Brodeur closes on the bill
12:17:05 PM Roll call
12:17:34 PM Tab 26, SB1512 on Controlled Substances by Brodeur
12:18:24 PM Senator Brodeur explains the bill
12:18:48 PM Senator Brodeur closes on the bill
12:19:06 PM Roll call
12:19:41 PM Tab 12, CS/SB 676 on Food Delivery Platforms by Bradley
12:19:58 PM Senator Bradley explains the bill
12:21:04 PM Chair Hutson recognizes public appearances
12:21:25 PM Senator Bradley waives close
12:21:31 PM Roll call
12:22:21 PM Tab 24, SB 1190 on Online Sting Operations Program by Ingoglia
12:22:45 PM Senator Ingoglia explains the bill
12:22:50 PM Senator Ingoglia waives close
12:22:55 PM Roll call
12:23:25 PM Tab 2, CS/SB 196 on Economic Development by Simon
12:23:42 PM Senator Simon explains the bill
12:24:25 PM Senator Simon waives close
12:24:34 PM Roll call
12:25:07 PM Tab 11, CS/SB 640 on Purple Heart Alert by Berman
12:25:28 PM Senator Berman explains the bill
12:26:52 PM Chair Hutson recognizes public appearance
12:27:00 PM Senator Berman closes on the bill
12:27:07 PM Roll call
12:27:36 PM Tab 14, CS/SB 768 on Duties Associated with Death by Stewart
12:27:57 PM Senator Stewart explains the bill
12:28:32 PM Senator Stewart waives close
12:28:40 PM Roll call

12:29:14 PM Tab 20, CS/SB 902 on Motor Vehicle Agreements by Boyd
12:29:40 PM Senator Boyd explains the bill
12:30:05 PM Senator Boyd waives close
12:30:13 PM Roll call
12:30:47 PM Tab 5, CS/SB 356 on Notaries by Avila
12:31:03 PM Senator Avila explains the bill
12:31:57 PM Chair Hutson recognizes public appearance
12:32:10 PM Senator Avila waives close
12:32:15 PM Roll call
12:32:30 PM Tab 16, CS/SB 818 on Military Leave by Avila
12:32:44 PM Senator Avila explains the bill
12:33:32 PM Chair Hutson recognizes public appearance
12:33:42 PM Senator Avila waives close
12:33:51 PM Roll call
12:34:12 PM Tab 19, SB 896 on Health Care Practitioners by Martin
12:34:41 PM Senator Martin explains the bill
12:35:29 PM Amendment #320058 by Martin
12:35:41 PM Senator Martin explains the amendment
12:36:04 PM Chair Hutson reports the amendment
12:36:12 PM Senator Martin waives close
12:36:17 PM Roll call
12:36:52 PM Tab 22, CS/SB 1140 on Mobile Homes by Burton
12:37:08 PM Senator Burton explains the bill
12:37:30 PM Amendment #336002 by Burton
12:37:44 PM Senator Burton explains the amendment
12:37:53 PM Chair Hutson reports the amendment
12:38:03 PM Chair Hutson recognizes public appearance
12:38:15 PM Senator Burton waives close
12:38:22 PM Roll call
12:38:59 PM Tab 17, CS/SB 830 on Youth Athletic Activities by Collins
12:39:19 PM Senator Collins explains the bill
12:39:42 PM Amendment #645726 by Collins
12:39:55 PM Senator Collins explains the amendment
12:40:27 PM Questions:
12:40:30 PM Senator Berman
12:40:54 PM Senator Collins
12:41:28 PM Chair Hutson recognizes public appearance
12:42:03 PM Tiffany Henderson, American Heart Association
12:43:55 PM Chair Hutson reports the amendment
12:44:09 PM Tiffany Henderson, American Heart Association
12:45:43 PM Debate:
12:45:47 PM Senator Berman
12:46:18 PM Senator Boyd
12:46:46 PM Senator Collins closes on the bill
12:47:33 PM Roll call
12:48:09 PM Tab 6, CS/SB 434 on Specialty License Plates by Harrell
12:48:40 PM Senator Harrell explains the bill
12:49:39 PM Amendment #246656 by Harrell
12:49:53 PM Senator Harrell explains the amendment
12:53:35 PM Chair Hutson passes the gavel to Vice Chair Stewart
12:54:04 PM Amendment to the amendment #300232 by Hutson
12:54:16 PM Chair Hutson explains the amendment
12:54:56 PM Chair Hutson waives close
12:55:06 PM Vice Chair Stewart reports the amendment
12:55:18 PM Vice Chair Stewart passes the gavel back to Chair Hutson
12:55:31 PM Amendment to the amendment #927578 by Harrell
12:55:48 PM Senator Harrell explains the amendment
12:55:57 PM Chair Hutson reports the amendment
12:56:21 PM Judith Ranger Smith, Singing For Change
12:58:50 PM Chair Hutson reports the amendment
12:59:17 PM Back on the bill as amended
12:59:22 PM Senator Harrell closes on the bill

1:00:06 PM Roll call
1:01:08 PM Tab 31, CS/HB 1 by Judiciary
1:01:22 PM Substitute Amendment #243784 by Hutson
1:02:12 PM Senator Grall explains the substitute amendment
1:08:37 PM Questions:
1:08:40 PM Senator Thompson
1:08:54 PM Senator Grall
1:09:12 PM Senator Thompson
1:09:31 PM Senator Grall
1:13:12 PM Senator Thompson
1:13:28 PM Senator Grall
1:14:42 PM Senator Berman
1:15:28 PM Senator Grall
1:16:28 PM Senator Berman
1:16:53 PM Senator Grall
1:17:50 PM Senator Berman
1:17:56 PM Senator Grall
1:19:08 PM Senator Berman
1:20:13 PM Senator Grall
1:20:16 PM Senator Berman
1:20:21 PM Senator Grall
1:20:53 PM Senator Berman
1:21:11 PM Senator Grall
1:21:21 PM Senator Berman
1:21:29 PM Senator Grall
1:22:40 PM Senator Berman
1:22:47 PM Senator Grall
1:25:21 PM Chair Hutson recognizes public appearances:
1:25:32 PM Steven Rocha, Policy Director Prism FL
1:26:18 PM Max Fenning, Prism
1:29:16 PM Chair Hutson reports the amendment
1:29:29 PM Chair Hutson recognizes public appearance on the bill:
1:30:30 PM John Labriola, Christian Family Coalition of Florida
1:30:43 PM Max Fenning, Prism Founder
1:32:16 PM Steven Rocha, Policy Director Prism FL
1:34:05 PM Lauren Buete
1:36:47 PM Karen Jaroch, Heritage Action for America
1:38:53 PM Kara Gross, ACLU of Florida
1:41:35 PM Greg Gonzalez, Foundation for Individual Rights and Expression (FIRE)
1:46:41 PM Ryan Kennedy, Florida Citizens Alliance
1:48:55 PM Amy Perwien
1:52:43 PM Bonnie Patterson-James
1:56:46 PM Debate:
1:56:49 PM Senator Thompson
1:58:03 PM Senator Jones
2:00:39 PM Senator Osgood
2:07:30 PM Senator Berman
2:10:44 PM Senator Collins
2:13:21 PM Senator Trumbull
2:16:02 PM Senator Wright
2:17:33 PM Senator Grall closes on the bill
2:25:39 PM Roll call
2:26:27 PM Tab 32 CS/CS/HB 3 temporarily postponed
2:26:59 PM CS/HB 1377 Public Records Investigations by SAC
2:27:58 PM Roll call
2:28:13 PM CS/SB 208 on Law Enforcement Training for Law Enforcement by Burgess
2:28:45 PM Senator Burgess explains the bill
2:28:57 PM Amendment #372730 by Burgess
2:29:13 PM Senator Burgess explains the bill
2:29:49 PM Chair Hutson reports the amendment
2:30:04 PM Senator Burgess waives close
2:30:10 PM Roll call

2:30:44 PM Tab 10, SB 570 on District Court Judges by Burgess
2:31:05 PM Senator Burgess waives close
2:31:10 PM Roll call
2:31:57 PM Tab 13, CS/CS/SB 738 on Environmental Management by Burgess
2:32:23 PM Amendment #399108 by Berman
2:32:33 PM Senator Berman explains the amendment
2:33:03 PM Chair Hutson recognizes public appearance
2:33:15 PM Debate:
2:33:21 PM Senator Burgess
2:33:43 PM Chair Hutson reports the amendment
2:33:50 PM Back on the bill as amended
2:33:54 PM Senator Burgess
2:35:03 PM Chair Hutson recognizes public appearances:
2:35:12 PM Robert Zales II
2:38:10 PM Mara Hatfield, Cancer Cluster Victims
2:44:28 PM Laura Youmans, Florida Justice Association
2:46:38 PM David Childs, FL Chamber of Commerce
2:49:22 PM Adam Basford, Associated Industries of Florida
2:50:15 PM Senator Burgess closes on the bill
2:53:41 PM Roll call
2:54:23 PM Tab 21, CS/CS/SB 996 on Education by Burgess
2:54:42 PM Senator Burgess explains the bill
2:55:49 PM Amendment #119110 by Burgess
2:55:58 PM Senator Burgess explains the amendment
2:56:31 PM Questions:
2:56:53 PM Senator Berman
2:57:23 PM Senator Burgess
2:57:51 PM Senator Berman
2:58:13 PM Senator Burgess
2:58:42 PM Chair Hutson recognizes public appearance on the amendment
2:58:56 PM Chair Hutson reports the amendment
2:59:04 PM Amendment #417764 by Burgess
2:59:17 PM Senator Burgess explains the bill
2:59:48 PM Chair Hutson reports the amendment
2:59:56 PM Amendment #396512 by Burgess
3:00:09 PM Senator Burgess explains the amendment
3:00:39 PM Questions:
3:00:50 PM Senator Berman
3:01:02 PM Senator Burgess
3:02:24 PM Senator Berman
3:02:33 PM Senator Burgess
3:03:00 PM Senator Berman
3:03:13 PM Senator Burgess
3:04:34 PM Chair Hutson recognizes public appearance:
3:05:03 PM Sue Woltarski
3:06:07 PM Debate:
3:06:08 PM Senator Berman
3:06:49 PM Chair Hutson reports the amendment
3:06:58 PM Back on the bill as amended
3:07:04 PM Questions:
3:07:08 PM Senator Stewart
3:07:12 PM Senator Burgess
3:09:34 PM Senator Stewart
3:09:38 PM Senator Burgess
3:09:51 PM Lynette Rodriguez-Wibbels
3:12:40 PM Heather Rodriguez-Wibbels
3:14:54 PM Debate:
3:14:56 PM Senator Berman
3:15:15 PM Senator Thompson
3:17:03 PM Senator Osgood
3:17:44 PM Senator Burgess closes on the bill
3:19:24 PM Roll call

3:20:08 PM Tab 7, CS/SB 476 on Wrongful Death of an Unborn Child by Grall
3:20:36 PM Senator Grall explains the bill
3:20:41 PM Amendment #917114 by Grall
3:20:50 PM Senator Grall explains the amendment
3:21:10 PM Questions on the amendment:
3:21:15 PM Senator Berman
3:21:23 PM Senator Grall
3:21:43 PM Senator Berman
3:21:59 PM Senator Grall
3:22:31 PM Senator Thompson
3:22:40 PM Senator Grall
3:23:20 PM Senator Thompson
3:23:43 PM Senator Grall
3:24:10 PM Acting Chair Mayfield recognizes public appearance on the amendment
3:25:07 PM Barbara DeVane, Florida Now
3:28:41 PM Debate:
3:28:47 PM Senator Berman
3:29:13 PM Senator Grall closes on the amendment
3:30:10 PM Acting chair Mayfield reports the amendment
3:30:26 PM Questions on the bill:
3:30:31 PM Senator Berman
3:31:28 PM Senator Grall
3:31:42 PM Senator Berman
3:32:09 PM Senator Grall
3:32:34 PM Senator Berman
3:32:57 PM Senator Grall
3:33:00 PM Senator Berman
3:33:15 PM Senator Grall
3:33:44 PM Senator Berman
3:33:50 PM Senator Grall
3:35:02 PM Senator Berman
3:35:13 PM Senator Grall
3:36:32 PM Senator Berman
3:36:43 PM Senator Grall
3:36:54 PM Senator Berman
3:37:28 PM Senator Grall
3:37:51 PM Senator Berman
3:38:15 PM Senator Grall
3:38:39 PM Senator Thompson
3:38:53 PM Senator Grall
3:40:11 PM Senator Thompson
3:40:30 PM Senator Grall
3:40:55 PM Senator Mayfield recognizes public appearance:
3:41:10 PM Kara Gross, ACLU of Florida
3:44:07 PM Robert Lee
3:46:13 PM Dr. Amy Perwien, InterFaith Alliance of SW Florida
3:49:24 PM Michelle Shindano, Florida Alliance of Planned Parenthood Affiliates
3:51:54 PM Senator Burton
3:52:47 PM Michelle Shindano
3:52:56 PM Senator Burton
3:53:08 PM Bonnie Patterson-James, Women's Voice of SW Florida
3:57:34 PM Laura Munoz, Florida Student Power
4:00:59 PM Yenisbel Vilorio, Six Action
4:05:47 PM Jon Harris Maurer, Equality Florida
4:07:24 PM John Labriola, Christian Family Coalition of Florida
4:10:12 PM Debate:
4:10:17 PM Senator Stewart
4:10:57 PM Senator Berman
4:14:41 PM Senator Thompson
4:16:13 PM Senator Grall closes on the bill
4:19:59 PM Roll call
4:20:58 PM Tab 4, CS/CS/SB 340 on Offenses Involving Critical Infrastructure by Yarborough

4:21:27 PM Chair Hutson explains the bill
4:21:48 PM Amendment #572674 by Yarborough
4:22:10 PM Senator Hutson explains the amendment
4:22:38 PM Chair Mayfield reports the amendment
4:23:46 PM Senator Hutson waives close on the bill
4:24:00 PM Roll call
4:24:38 PM Tab 29, SB 1638 on Funding for Environmental Management by Hutson
4:25:13 PM Senator Hutson explains the bill
4:25:39 PM Amendment #821044 by Hutson
4:25:51 PM Senator Hutson explains the amendment
4:26:42 PM Questions:
4:26:44 PM Senator Berman
4:27:25 PM Senator Hutson
4:27:31 PM Senator Hutson waives close
4:27:42 PM Chair Mayfield reports the amendment
4:27:52 PM Chair Mayfield recognizes public appearance on the bill as amended
4:28:09 PM Senator Hutson waives close
4:28:18 PM Roll call
4:28:59 PM Tab 35, SPB 7064 on Federal Budget Line Item Veto by Hutson
4:29:34 PM Senator Hutson explains the bill
4:29:43 PM Chair Mayfield recognizes public appearance
4:30:03 PM Senator Wright moves bill be read as committee bill
4:30:15 PM Roll call
4:30:39 PM Tab 36, SPB 7066 on Equal Application of the Law by Hutson
4:30:55 PM Senator Hutson explains the bill
4:31:27 PM Senator Wright moves bill be read as a committee bill
4:31:44 PM Roll call
4:32:16 PM Chair Mayfield passes gavel back to Chair Hutson
4:32:36 PM Tab 25, CS/SB 1356 on School Safety by Calatayud
4:32:59 PM Senator Calatayud explains the bill
4:34:26 PM Senator Calatayud waives close
4:34:33 PM Roll call
4:35:21 PM Tab 8, SB 480 on Renewable Natural Gas by DiCeglie
4:35:39 PM Senator Collins explains the bill
4:35:52 PM Substitute Amendment #360380 by DiCeglie
4:36:10 PM Senator Collins explains the amendment
4:36:53 PM Chair Hutson recognizes public appearance:
4:37:04 PM David Cullen, Sierra Club of Florida
4:37:24 PM Samantha Kaddis, GenCleo Action Fund
4:38:22 PM Back on the bill as amended:
4:38:28 PM Chair Hutson recognizes public appearance:
4:38:37 PM Yenisbel Vilorio, Six Action
4:39:36 PM Laura Munoz, Florida Student Power
4:43:23 PM Senator Collins waives close
4:43:28 PM Roll call
4:44:02 PM Tab 14, CS/SB 754 on Regulation of Commercial Vehicles by DiCeglie
4:44:17 PM Senator Collins explains the bill
4:44:53 PM Senator Collins waives close
4:45:01 PM Roll call
4:45:25 PM Tab 18, CS/SB 846 on Risk Retention Groups by DiCeglie
4:45:51 PM Senator Collins explains the bill
4:45:57 PM Senator Collins waives close
4:46:02 PM Roll call
4:46:47 PM Senator Rodriguez moves to be recorded
4:46:54 PM Senator Trumbull moves to be recorded
4:47:00 PM Senator Calatayud moves to be recorded
4:47:23 PM Senator Mayfield moves to be recorded
4:47:29 PM Senator Berman moves to be recorded
4:47:38 PM Senator Burton moves to be recorded
4:47:56 PM Senator Wright moves to adjourn
4:48:01 PM Meeting adjourned