The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Brandes, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, March 29, 2021
TIME: 3:30—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Brandes, Chair; Senator Gibson, Vice Chair; Senators Baxley, Boyd, Bradley, Broxson, Mayfield, Polsky, Rodrigues, Rouson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	PUBLIS TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 WEST PENSACOLA STREET, TALLAHASSEE, FL 32301		
1	**SB 1922** Gruters (Similar CS/H 1559)	Dissolution of Marriage; Requiring the court to prioritize certain forms of alimony; revising provisions related to durational alimony; creating a presumption that equal time-sharing is in the best interests of a child, with an exception; requiring the court to grant a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other substantive issues, under certain circumstances, etc. JU 03/22/2021 Temporarily Postponed JU 03/29/2021 Fav/CS AP RC	Fav/CS Yeas 6 Nays 4
2	**CS/SB 716** Health Policy / Book (Similar H 361)	Consent for Pelvic Examinations; Revising the definition of the term “pelvic examination”; revising the circumstances under which a pelvic examination may be performed without written consent; authorizing written consent for a pelvic examination to be obtained as a part of a general consent form and to allow multiple health care practitioners or students to perform the examination, etc. HP 03/17/2021 Fav/CS JU 03/29/2021 Fav/CS RC	Fav/CS Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 742** Banking and Insurance / Perry (Similar CS/H 815, Compare CS/H 1209, CS/S 1408)	Insurance; Redefining the term “covered policy” under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; authorizing any association, trust, or pool created for the purpose of forming or managing a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communication media technology; specifying the entities that must receive requests for loss run statements; providing a ratemaking factor for workers’ compensation and employer’s liability insurance, etc. BI 03/10/2021 Fav/CS JU 03/29/2021 Favorable AP	Favorable Yeas 10 Nays 1
4	**SB 826** Baxley (Identical H 871)	Child Protection Teams; Revising the definition of the term “officer, employee, or agent” as it applies to immunity from personal liability in certain actions to include any member of a Child Protection Team established by the Department of Health in certain circumstances, etc. CF 03/09/2021 Favorable JU 03/29/2021 Favorable RC	Favorable Yeas 11 Nays 0
5	**SB 1234** Boyd (Similar H 371)	False Reports of Crimes; Providing enhanced criminal penalties for the willful making of false reports of crimes in certain circumstances; ranking offenses created by the act on levels 3, 6, and 8 of the offense severity ranking chart of the Criminal Punishment Code, etc. CJ 03/09/2021 Favorable JU 03/29/2021 Fav/CS RC	Fav/CS Yeas 11 Nays 0
6	**SB 1884** Rodrigues (Identical H 1409)	Preemption of Firearms and Ammunition Regulation; Providing that written or unwritten policies are subject to provisions allowing for recovery of damages if such policies violate specified provisions; providing that a plaintiff challenging a local government regulation concerning firearms is considered a prevailing plaintiff for certain purposes in specified circumstances, etc. CA 03/16/2021 Favorable JU 03/29/2021 Favorable RC	Favorable Yeas 6 Nays 4

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 1950** Banking and Insurance / Gruters (Similar H 1641)	Financial Institutions; Providing that the failure of foreign nationals to appear through video conference at certain hearings is grounds for denial of certain applications; providing that the imposition of fees or charges upon consumers for online audit verifications of financial institution accounts is a violation of the Florida Deceptive and Unfair Trade Practices Act; revising the interval for the Office of Financial Regulation to conduct certain examinations; authorizing the Office of Financial Regulation to delay examinations of financial institutions under certain circumstances; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or target market and the ability of such service area or target market to support new and existing bank facilities, etc. BI 03/16/2021 Fav/CS JU 03/29/2021 Fav/CS RC	Fav/CS Yeas 11 Nays 0
8	**CS/SB 1508** Criminal Justice / Book (Compare H 1229)	Public Records; Citing this law as "Serena's Law"; requiring each county recorder or clerk of the court to make publicly available on an Internet website the identity of a defendant or respondent against whom a protective injunction is entered, as well as the fact that the injunction has been entered; providing for certain persons to request that such information be made available on the public website; requiring county recorders or clerks of the court to post such notices on the website and in the office of each county recorder or clerk of the court; specifying what must be included in notices; requiring that final judgments for injunctions for protection be recorded in official records, etc. CJ 03/23/2021 Fav/CS JU 03/29/2021 Favorable AP	Favorable Yeas 11 Nays 0
9	**CS/SB 1868** Criminal Justice / Bean (Similar CS/H 363)	Privileged Communications Made to Crime Stoppers Organizations; Prohibiting a person from knowingly and willfully attempting to obtain, obtaining, or disclosing a privileged communication or protected information; providing a penalty; providing an exemption from criminal liability for employees, board members, or volunteers of a crime stoppers organization in certain circumstances; providing immunity from civil liability for certain actions by specified persons concerning privileged communications, etc. CJ 03/23/2021 Fav/CS JU 03/29/2021 Fav/CS RC	Fav/CS Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 386** Wright (Similar H 557, S 356, Compare H 903, S 298, CS/S 838)	Payments to Clerks of the Circuit Courts; Providing procedures for payment plans; revising the methods by which clerks of the circuit courts must accept payments for certain fees, charges, costs, and fines; requiring the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, to develop a uniform payment plan form by a specified date; requiring that a notification form and the uniform traffic citation include certain information about paying a civil penalty, etc. JU 03/29/2021 Fav/CS ACJ AP	Fav/CS Yeas 11 Nays 0
11	**SB 1992** Harrell (Identical H 1483)	Solicitation of Nonmedical Services; Providing that a person who submits or sponsors a nonmedical solicitation that contains certain terminology or fails to include specified disclosures commits a deceptive and unfair trade practice, subject to the penalties and remedies of the Florida Deceptive and Unfair Trade Practices Act; prohibiting the unauthorized use, sale, or transfer of protected health information for the purpose of soliciting professional services; providing criminal penalties for willful and knowing violations and enhanced criminal penalties for violations committed for financial gain, etc. CM 03/22/2021 Favorable JU 03/29/2021 Temporarily Postponed RC	Temporarily Postponed
12	**SB 282** Baxley (Identical H 529)	Moments of Silence in Public Schools; Providing legislative findings; requiring that public school principals require certain teachers to set aside time for a moment of silence at the beginning of each school day; prohibiting teachers from making suggestions as to the nature of any reflection that a student may engage in during the moment of silence; deleting a provision authorizing district school boards to provide a brief period of silent prayer or meditation; requiring certain teachers to encourage parents or guardians to discuss the moment of silence with their children and to make suggestions as to the best use of this time, etc. ED 02/03/2021 Favorable JU 03/29/2021 Fav/CS RC	Fav/CS Yeas 11 Nays 0

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1922
INTRODUCER:	Judiciary Committee; Senators Gruters and Hooper
SUBJECT:	Dissolution of Marriage
DATE:	March 30, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1922 amends family law issues related to alimony, timesharing between parents of a minor child, and bifurcation of a dissolution of marriage case.

Significant changes to alimony law include:

- Permanent (lifetime) alimony is eliminated, leaving bridge-the-gap, rehabilitative, and durational forms of alimony.
- The criteria for determining any form of alimony is expanded to include a presumption that both parties will have a lower standard of living post-dissolution.
- A court may not require an obligor to purchase life insurance to secure the award of alimony. However, an obligor must cooperate with an obligee's application for life insurance on the obligor.
- The characterization of a marriage as either short-term, moderate-term, or long-term is repealed. The related presumptions regarding alimony appropriate to the term of the marriage are also repealed.
- Rehabilitative alimony is limited to the lesser of 5 years or 50 percent of the term of the marriage.
- Durational alimony terminates upon a showing that the obligee is in a supportive relationship.
- Durational alimony is limited in time to 50 percent of the term of the marriage, may only be awarded where other forms of alimony are insufficient, and is limited in amount to no more than 25 percent of the difference between the parties' net incomes.

- No alimony may be awarded to a party who has a net income that is equal to or more than the other party's net income.
- For purposes of determining alimony, VA disability benefits, and state reemployment assistance or unemployment compensation, are not considered income.
- A divorcing spouse who has reasonably retired cannot be ordered to pay alimony unless the other spouse is too young for Social Security retirement benefits and qualifies for the medically needy program.
- An existing alimony award may be modified or terminated upon early retirement if such retirement is reasonable.
- An existing alimony award terminates when the obligor reaches the Social Security full retirement age, unless durational alimony has been paid for less than 50 percent of the term of the marriage, the obligee is too young for Social Security retirement benefits, and the obligee qualifies for the medically needy program.
- A petition for modification or termination in anticipation of retirement may be filed up to 12 months prior to the planned retirement date.
- The concept of a supportive relationship is expanded to allow proof of a recent supportive relationship and a corresponding right to seek reimbursement of alimony paid. The description of a supportive relationship is expanded by repeal of the requirement to show cohabitation and by adding engagement to be married to another as proof towards a finding of a supportive relationship.

Timesharing with minor children is changed by creation of a presumption in favor of equal time-sharing between parents.

Bifurcation refers to the process where the court dissolves the marriage, reserving other matters such as property distribution, alimony, timesharing, and child support for future court action. The bill gives either party to a dissolution of marriage the right to bifurcation if the case has been pending for longer than one year from the date the respondent received the summons.

The bill is effective July 1, 2021. Changes to alimony apply to existing cases on the effective date. Changes to timesharing and bifurcation apply to cases filed on or after the effective date.

II. Present Situation:

Dissolution of marriage may involve many different but related matters. Three matters related to dissolution addressed by this bill are alimony, timesharing with children, and bifurcation. Note that the timesharing changes also affect parents who never married.

Alimony

Alimony is a court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced.[1] Alimony may be agreed to by the parties or awarded by the court after an evidentiary hearing. While child support is determined primarily through a statutory formula, alimony is determined at the discretion of the trial court based on statutory and equitable factors.

[1] Alimony, BLACK'S LAW DICTIONARY (11th ed. 2019).

Calculation of the Amount of Alimony

There is no fixed formula for alimony. Alimony is based on both financial need and the ability to pay.[2] After making an initial determination to award alimony, the court must consider ten factors:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.[3]

The income tax factor has less relevance than in the past. Beginning January 1, 2019, alimony or separate maintenance payments are not deductible from the income of the obligor, or includable in the income of the obligee, if made under a divorce or separation agreement executed after December 31, 2018. This also applies to a divorce or separation agreement executed on or before December 31, 2018, and modified after December 31, 2018, as long as the modification changes the terms of the alimony or separate maintenance payments and states that the alimony or separate maintenance payments are not deductible by the obligor or includable in the income of the obligee. On the other hand, alimony or separate maintenance payments are generally deductible from the income of the obligor and includable in the income of the obligee, if made under a divorce or separation agreement executed on or before December 31, 2018, even if the agreement was modified after December 31, 2018, so long as the modification is not one described in the preceding sentence.[4]

The court may also consider adultery by either spouse in a decision to award alimony.[5] That consideration is dependent upon the circumstances of each particular case. Absent a showing of a related depletion of marital assets, a party's adulterous misconduct is not a valid reason to award a greater share of those marital assets to the innocent spouse or to deny the adulterous spouse alimony. Furthermore, despite evidence of adultery, need and ability to pay remain the primary considerations in awarding alimony.[6]

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.[7] A court making the requirement must first make specific findings regarding the availability and

[2] Section 61.08(2), F.S.
[3] Section 61.08(2)(a)-(j), F.S.
[4] IRS, *CLARIFICATION: Changes to deduction for certain alimony payments effective in 2019* (March 3, 2021) *available at* https://www.irs.gov/forms-pubs/clarification-changes-to-deduction-for-certain-alimony-payments-effective-in-2019 (last viewed March 13, 2021).
[5] Section 61.08(1), F.S.
[6] *Williamson v. Williamson*, 367 So. 2d 1016, 1019 (Fla.1979); *Noah v. Noah*, 491 So. 2d 1124, 1127 (Fla. 1986); *Keyser v. Keyser*, 204 So. 3d 159, 161 (Fla. 1st DCA 2016).
[7] Section 61.08(3), F.S.

cost of insurance, the obligor's ability to pay, and the special circumstances that warrant the requirement for security of the obligation.[8] The special circumstances required to support an order mandating life insurance include "a spouse potentially left in dire financial straits after the death of the obligor spouse due to age, ill health and/or lack of employment skills, obligor spouse in poor health, minors living at home, supported spouse with limited earning capacity, obligor spouse in arrears on support obligations, and cases where the obligor spouse agreed on the record to secure an award with a life insurance policy."[9]

An award of alimony may not result in the obligor with significantly less net income than the net income of the obligee absent exceptional circumstances.[10] What qualifies as exceptional circumstances is undefined.

Types of Alimony

For purposes of determining the appropriate type of alimony to award, marriages are classified by term or length of marriage, based on the time from the date of marriage to the date the dissolution of marriage action was filed:

- Short term means less than 7 years.
- Moderate-term means greater than 7 years but less than 17 years.
- Long-term means greater than 17 years.[11]

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.[12]

Bridge-the-gap alimony:[13]

- Is designed to assist a party in his or her transition from being married to being single.
- May be awarded in a marriage of any term.
- Cannot exceed 2 years in duration.
- May not be modified.
- Terminates upon death or remarriage.

Rehabilitative alimony:[14]

- Is designed to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- May be awarded in a marriage of any term.
- Can be of any duration.
- May be modified based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
- Does not automatically terminate upon remarriage.

---

[8] *O'Neill v. O'Neill*, 305 So. 3d 551, 554 (Fla. 4th DCA 2020).
[9] *Kotlarz v. Kotlarz*, 21 So. 3d 892, 893 (Fla. 1st DCA 2009).
[10] Section 61.08(9), F.S.
[11] Section 61.08(4), F.S. This triad was first enacted in 2010. Ch. 2010-199, Laws of Fla.
[12] Section 61.08(1), F.S.
[13] Section 61.08(5), F.S.
[14] Section 61.08(6), F.S.

Durational alimony:[15]

- Is designed to provide a party with economic assistance for a set period of time.
- May be awarded following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- May not exceed the length of the marriage.
- May be modified as to amount, based upon a substantial change in circumstances; but the length may not be modified except under exceptional circumstances.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Permanent alimony:[16]

- Is designed to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.
- May be awarded only after a finding that no other form of alimony is fair and reasonable under the circumstances of the parties, following a marriage of:
  - Long duration, if such an award is appropriate upon consideration of the ten factors by a preponderance of the evidence;
  - Moderate duration, if such an award is appropriate based upon clear and convincing evidence after consideration of the 10 factors; or
  - Short duration, if there are written findings of exceptional circumstances.
- Is not for a fixed period of time.
- May be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Substantial Change in Circumstances

Where allowed, either party may seek modification of an alimony award on the grounds of a substantial change in circumstances.[17] To obtain a modification of alimony, the party seeking modification must allege, and the trial court must find, that:

- There has been a substantial change in circumstances.
- The change was not contemplated at the time of the final judgment of dissolution.
- The change is sufficient, material, permanent, and involuntary.[18]

The court may modify support retroactively to the date of the filing of the motion.[19]

Supportive Relationship

To avoid losing alimony because of remarriage, it was once common to simply "live with" someone. Today, the existence of a supportive relationship between the obligee and a third party

[15] Section 61.08(7), F.S.
[16] Section 61.08(8), F.S.
[17] Section 61.14(1)(a), F.S.
[18] *Golson v. Golson*, 207 So. 3d 321, 325 (Fla. 5th DCA 2016).
[19] Section 61.14(1)(a), F.S.

may be a substantial change in circumstances that warrants a modification of alimony. To modify alimony on an assertion of cohabitation between the obligee and a third party, the court must find:

- The existence of a supportive relationship between the obligee and a third party; and
- That the obligee lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.[20]

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.[21]

Retirement

Voluntary retirement may qualify as a substantial change in circumstances that warrants a modification of alimony. It is an exception to the general rule that a substantial change in circumstances must result from an involuntary action. Retirement as a substantial change in circumstances is not addressed in statute. The leading case in this area ruled:

> In determining whether a voluntary retirement is reasonable, the court must consider the payor's age, health, and motivation for retirement, as well as the type of work the payor performs and the age at which others engaged in that line of work normally retire. . . . [A] payor spouse should not be permitted to unilaterally choose voluntary retirement if this choice places the receiving spouse in peril of poverty. Thus, the court should consider the needs of the receiving spouse and the impact a termination or reduction of alimony would have on him or her. In assessing those needs, the court should consider any assets which the receiving spouse has accumulated or received since the final judgment as well as any income generated by those assets.[22]

An obligor looking into voluntary retirement in the near future faces a difficult decision. The motion cannot be filed until the substantial change in circumstances has actually occurred, that is, the obligor must actually retire. If the court finds that the retirement was not reasonable some months later, the now unemployed obligor must continue to pay the alimony without the job that he or she left and is unlikely to be hired back to.

[20] Section 61.14(b), F.S.
[21] Section 61.14(1)(b)1., F.S.
[22] *Pimm v. Pimm*, 601 So. 2d 534, 537 (Fla. 1992).

Timesharing with Minor Children

The public policy of the state is for each minor child to have "frequent and continuing contact with both parents."[23] Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.[24] In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of statutory factors. These factors include:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child's school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.[25]

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.[26]

Bifurcation of a Dissolution Case

Normally, a dissolution of marriage case is resolved when the court issues an omnibus final judgment of dissolution, which judgment dissolves the marriage, splits the debts and property of the couple, and, where required, resolves timesharing with the children, child support, and

[23] Section 61.13(2)(c)1., F.S.
[24] Section 61.13 (2)(c)2., F.S.
[25] Section 61.13(3), F.S.
[26] Section 61.13(3)(t), F.S.

alimony. The term “bifurcation” refers to the process whereby the court grants the dissolution of marriage, but reserves jurisdiction to resolve the remaining issues between the parties at a later date.

Parties seek bifurcation mostly for purposes of remarriage. Bifurcation is allowed but its use is discouraged by the courts. The Florida Supreme Court explained why:

> [W]e believe the trial court should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children.[27]

The Florida Supreme Court has established presumptive trial court time standards for the most common types of cases. The time standards are not deadlines, but represent the time within which most cases should be resolved. The time standard for a contested domestic relations case is 180 days from filing to final disposition.[28]

Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact which is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.[29] There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.[30]

Presumptions which are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.[31]

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.[32] These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced

[27] *Claughton v. Claughton*, 393 So. 2d 1061, 1062 (Fla. 1980).
[28] Fla. R. Jud. Admin. 2.250(a)(1)(C).
[29] *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).
[30] Section 90.302, F.S.
[31] *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).
[32] Section 90.304, F.S.

of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.[33]

III. Effect of Proposed Changes:

Alimony

Forms of Alimony

The bill changes alimony law to eliminate permanent alimony as a form of alimony that a court may order. However, an obligor may agree to permanent alimony.

The bill prioritizes the remaining forms of alimony in this order:
- Bridge-the-gap alimony.
- Rehabilitative alimony.
- Durational alimony.

If the court orders a combination of forms of alimony, it must make written findings regarding the basis for the award. A combination may only be awarded to provide greater economic assistance for the purpose of rehabilitation of the obligee.

Criteria for an Award of Alimony

The bill provides that adultery of a spouse may not be the sole basis for awarding or denying alimony unless the adultery contributed to a depletion of marital assets.

The bill amends the 10 factors for consideration in determining the amount of an award of alimony as follows:
- The standard of living established during the marriage factor is limited. In looking at the standard of living during the marriage, the court must take into account the needs and necessities of life for each party after dissolution. The bill also creates a rebuttable presumption that both parties will have a lower standard of living after the dissolution.
- The tax treatment factor is modified by repeal of the portion regarding the tax treatment of the alimony. This reflects a change in the federal tax code effective January 1, 2019.
- The "all sources of income" factor is amended by a change in the definition of "income" at s. 61.046(8), F.S., to exclude VA disability payments, reemployment assistance, and unemployment compensation as income.[34]
- A court using the "any other factor" language must specify the other factor and the findings of fact justifying the factor.

The bill prohibits a court from requiring that the obligor purchase life insurance or secure a bond or other security naming the obligee as beneficiary. The bill adds that the obligee may purchase life insurance on the obligor, and that the obligor must cooperate with the application and

[33] *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).
[34] These exclusions will not apply to formulas in the bill based on the terms "gross income" or "net income" as those terms are separately defined terms.

underwriting process. The bill implies that an obligee has an insurable interest in the life of obligor.

The bill repeals the classification of marriages being either short-term, moderate-term, or long-term. The bill also repeals their related presumptions regarding which forms of alimony are appropriate to each.

The bill limits the length of an alimony award:
- Bridge-the-gap alimony remains limited to 2 years.
- Rehabilitative alimony is limited to the lesser of 50 percent of the length of the marriage or 5 years.
- Durational alimony is limited to 50 percent of the length of the marriage.

The bill changes durational alimony to:
- Add that durational alimony ends upon proof of a supportive relationship between the obligee and another person.
- Repeal the requirement to show “exceptional circumstances” in order to modify the duration of the alimony.
- Require a court awarding durational alimony to make written finding that bridge-the-gap, rehabilitative alimony, or a combination of the two, is not appropriate.
- Durational alimony is limited to the lesser of the obligee’s reasonable need for alimony or 25 percent of the difference between the parties’ net incomes.

The term “net income” is defined by the bill as gross income[35] minus allowable deductions, which are:
- Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
- Federal insurance contributions or self-employment tax.
- Mandatory union dues.
- Mandatory retirement payments.
- Health insurance payments, excluding payments for coverage of a minor child.
- Court-ordered support for other children which is actually paid.
- Spousal support paid pursuant to a court order from a previous marriage

The bill makes the following additional changes to, and limits on, an alimony award:
- Alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party’s net income. The bill repeals the provision that allows an award of alimony that leaves an obligor with significantly less income upon a showing of exceptional circumstances.
- The court may not use potential Social Security benefits in calculating imputed income.
- For a spouse to claim disability as grounds for not imputing income, the spouse must either be actually qualified for federal Social Security benefits or must show that he or she would qualify as disabled under that program.

[35] The bill references the definition of “gross income” in the child support law at s. 61.30(2), F.S. That subsection broadly includes all forms of income, including imputed income, but excluding public support payments.

- The court must consider all alimony payments made prior to the final hearing, whether voluntary or court-ordered, when determining the amount and duration of alimony awarded in the final judgment of dissolution.

Retirement

The bill addresses retirement of an obligor at two stages -- a retired person in a current dissolution of marriage proceeding, and a current obligor seeking modification or termination of an existing alimony award to allow retirement.

As to a pending dissolution of marriage, if a spouse is reasonably retired, that spouse may not be ordered to pay alimony to the other spouse unless:

- The other spouse has not yet reached the minimum age to receive any Social Security retirement benefits;[36] and
- The other spouse would, based on the outcome of the dissolution, qualify for the Florida Medicaid medically needy program.[37]

When considering whether a spouse is reasonably retired in a pending dissolution of marriage case, the court must consider these factors when determining if the retirement is reasonable:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work, and the typical age of retirement for that profession or line of work.
- The needs and necessities of life of both spouses.

As to modification or termination of an existing award of alimony based on retirement, the court must consider these factors when determining if the retirement is reasonable:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work, and the typical age of retirement for that profession or line of work.
- The needs and necessities of life of both parties.
- The impact that a termination or reduction of alimony would have on the obligee, taking into consideration the present assets and income of the obligee.

The factors for determination of a reasonable retirement for purposes of a modification or termination of alimony are similar to those in current case law.[38] The case law requirement that alimony set by agreement is more difficult to modify than alimony set by the court is not listed as a consideration.

---

[36] Currently, the minimum age for retirement benefits is 62. https://www.ssa.gov/benefits/retirement/planner/agereduction.html (last viewed March 17, 2021).

[37] The medically needy program grants eligible persons temporary access to Medicaid. A person otherwise eligible for Medicaid but whose gross income is too high qualifies as medically needy in any month where, deducting their medical expenses from gross income the remainder is less than the Medicaid income threshold. Where qualified, the medically needy person's medical bills for the remainder of that month are paid through Medicaid. Qualification is on a month-to-month basis.

[38] *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992).

The modification statute is further amended to provide that an alimony award terminates when the obligor reaches the Social Security full retirement age,[39] except that the court may order durational alimony to extend beyond the Social Security full retirement age if:

- The durational alimony has been paid for a duration of less than 50 percent of the term of the marriage;
- The obligee has not reached the minimum age to qualify for Social Security retirement benefits; and
- The obligee would, as a result of termination of alimony, qualify for the Florida Medicaid medically needy program.

An extension of alimony beyond the age at which the obligor has reached the Social Security full retirement age may not extend the total duration of alimony beyond 50 percent of the term of the marriage.

The bill creates a procedural mechanism to file a petition for modification in anticipation of a future retirement. An obligor may file the petition up to 12 months prior to the anticipated retirement date.

The bill provides that receipt of any Social Security, disability, or retirement received by an obligee is considered a substantial change in circumstances that would allow the obligor to seek modification of alimony.

The bill provides that an agreement on alimony may limit modification of the agreement based on a threshold or a limited period of time.

Modification of Termination of Alimony Based on a Supportive Relationship

The bill expands the qualification for the filing of a petition to modify or terminate alimony based on a supportive relationship to include the right to file the petition regarding a past relationship, happening up to 180 days prior to filing the petition.

The bill broadens the description of a supportive relationship to:

- Repeal the requirement to show cohabitation.
- Add to the factors proof that the couple refer to each other as “my partner” or “my fiancé.”
- Add to the factors proof of a longstanding relationship.
- Add to the factors proof that the couple is engaged to be married.

Upon a finding that a supportive relationship exists, the bill adds an additional remedy -- the court may order reimbursement of past alimony paid in any equitable amount.

The bill provides that remarriage or cohabitation by the obligor is not grounds for either party to petition for modification of alimony. An obligee may not seek modification based on the income or assets of the obligor’s new spouse or another person living with the obligor, and the obligor

[39] For many years the full retirement age was 65. Currently, it is being slowly raised and will be 67 for persons born in 1960 or later. https://www.ssa.gov/benefits/retirement/planner/agereduction.html (last viewed March 17, 2021).

may not seek modification based on the obligor's reliance upon the income and assets of the subsequent spouse or another person living with him or her.

Effective Dates of Changes to Alimony

Changes to alimony law in general, and to the effect of retirement on the initial dissolution of marriage case, are effective July 1, 2021, and apply to any case pending on that date, including pending on appeal.

Changes to alimony law related to modification of an existing award on the grounds of retirement of the obligor, are effective July 1, 2021, and apply to any modification motion pending on that date, including one pending on appeal.

Timesharing with Minor Children

The bill creates a presumption that equal time-sharing is in the best interests of a minor child common to the parties. The parties may jointly waive this presumption.

The change to timesharing is effective for any action filed on or after July 1, 2021.

Bifurcation of Dissolution Case

The bill creates a statutory right to bifurcation of a dissolution of marriage case. Either party may request bifurcation if more than 365 days have elapsed since the respondent spouse was served with a summons. Unless the other party shows that irreparable harm will result from granting a final judgment of dissolution of marriage, the court must grant the motion. Once granted, the court will enter a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.

Before granting the final dissolution reserving jurisdiction, if the court has not already done so, the court must enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court.

This part of the bill applies to all petitions for dissolution of marriage filed on or after July 1, 2021.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

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: 61.046, 61.08, 61.13, 61.14, and 61.19.

IX. Additional Information:

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

CS by Judiciary on March 29, 2021:
The bill repealed s. 61.14(1)(d), F.S., a paragraph that gives the Department of Revenue

the authority to adopt administrative rules to implement s. 61.14, F.S. The rulemaking authority is unrelated to alimony. The committee substitute removes this repeal, and thus retains current law.

B. Amendments:

None.

699572

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 519 - 520.

====== 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 447 - 448

and insert:

Section 4. Paragraph (b) of subsection (1) of section 61.14, Florida Statutes, is amended, and paragraph (c)

699572

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

Delete lines 61 - 62

and insert:

providing that an obligor’s

By Senator Gruters

23-01257-21 20211922__

A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.046, F.S.; revising the definition of the term "income"; amending s. 61.08, F.S.; defining terms; requiring the court to prioritize certain forms of alimony; authorizing the court to grant permanent alimony under certain circumstances; requiring the court to make certain written findings in its awards of alimony; prohibiting the court from denying or granting an award of alimony solely on the basis of adultery, with an exception; revising factors that the court must consider in determining the proper type and amount of alimony; authorizing a party to whom the court has awarded alimony to purchase or maintain a life insurance policy on the obligor's life to protect an award of alimony; requiring the obligor to cooperate in the process of securing the life insurance; deleting certain rebuttable presumptions related to the duration of a marriage for purposes of determining alimony; prohibiting an award of rehabilitative alimony from exceeding specified timeframes; revising a provision authorizing the modification of rehabilitative alimony upon completion of the rehabilitative plan to include a certain timeframe; revising provisions related to durational alimony; prohibiting the length of an award of durational alimony from exceeding a specified timeframe; specifying what constitutes the length of a marriage for the purpose of determining durational

Florida Senate - 2021 **SB 1922**

23-01257-21 20211922__

alimony; requiring the court to make certain written findings when awarding durational alimony; providing a formula for the calculation of durational alimony; providing that a party who has reached retirement age in accordance with specified provisions may not be ordered to pay alimony; providing an exception; establishing that alimony may not be awarded to a party who has a certain monthly net income; prohibiting social security retirement benefits from being imputed to the obligor, with an exception; requiring an obligee to meet certain requirements if he or she alleges that a physical disability has impaired his or her ability to earn the imputed income; requiring the court to consider certain payments made to the obligee when determining the amount and length of rehabilitative or durational alimony; providing applicability; amending s. 61.13, F.S.; creating a presumption that equal time-sharing is in the best interests of a child, with an exception; providing applicability; deleting a provision related to the development of a parenting plan; amending s. 61.14, F.S.; authorizing the court to order an obligee to reimburse alimony payments to the obligor under certain circumstances; specifying a timeframe for the court to consider a supportive relationship between the obligee and another person for purposes of reducing or terminating an award of alimony or ordering reimbursement of alimony payments; revising factors the court may consider when

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

determining whether a supportive relationship exists or existed between the obligee and another person; deleting the authority for the Department of Revenue to adopt certain rules; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; providing that the income and assets of the obligor's subsequent spouse are irrelevant to an action for modification of alimony; requiring an alimony obligation to terminate upon the obligor reaching full retirement age; providing an exception; authorizing the court to terminate an alimony obligation if the obligor retires at a reasonable age for his or her profession or line of work; requiring the court to consider certain factors in determining whether the obligor's retirement age is reasonable; authorizing an obligor to prospectively file a petition for modification or termination of alimony, effective upon his or her retirement; requiring a court to modify or terminate an alimony award upon retirement of the obligor, with an exception; providing that certain benefits of the obligee constitute a change in circumstance for which an obligor may seek modification of an alimony award; providing that certain agreements on alimony payments are considered expressly modifiable or eligible for termination under certain circumstances; providing applicability; amending s. 61.19, F.S.; requiring the court to grant a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other

substantive issues, under certain circumstances; providing for temporary orders necessary to protect the parties and their children, if any; providing that such temporary orders are effective until all other issues are adjudicated by the court; providing applicability; providing an effective date.

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

Section 1. Subsection (8) of section 61.046, Florida Statutes, is amended to read:

61.046 Definitions.—As used in this chapter, the term:

(8) "Income" means any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of <u>child</u> support.

Section 2. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

<u>(1) As used in this section, the term:</u>

<u>(a) "Alimony" means a court-ordered or voluntary payment of</u>

support by one spouse to the other spouse. The term includes any voluntary payment made after the date of filing of an order for maintenance, spousal support, temporary support, or separate support when the payment is not intended for the benefit of a child in common.

(b) “Gross income” means gross income as determined in accordance with s. 61.30.

(c) “Net income” means income that is determined by subtracting allowable deductions from gross income. For purposes of this section, allowable deductions include any of the following:

1. Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.

2. Federal insurance contributions or self-employment tax.

3. Mandatory union dues.

4. Mandatory retirement payments.

5. Health insurance payments, excluding payments for coverage of a minor child.

6. Court-ordered support for other children which is actually paid.

7. Spousal support paid pursuant to a court order from a previous marriage.

(2)(a)~~(1)~~ In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of~~, which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, or a ~~permanent in nature or any~~ combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other

form of alimony. The court may grant permanent alimony only if the parties enter into an agreement for permanent alimony. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which the alimony is awarded. The court may award a combination of forms of alimony only to provide greater economic assistance in order to allow the recipient to achieve rehabilitation.

(c) The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. However, the adultery of a spouse may not be the court’s sole basis for denying a request for alimony or awarding alimony, unless the adultery contributed to a depletion of marital assets. In all dissolution actions, the court shall include written findings of fact relative to the factors provided ~~enumerated~~ in subsection (3) ~~(2)~~ supporting the ~~an~~ award or denial of alimony.

(3)~~(2)~~ In determining whether to award alimony or maintenance, the court shall first make a specific, written factual determination as to whether the other ~~either~~ party has an actual need for alimony or maintenance and whether the other ~~either~~ party has the ability to pay alimony or maintenance. If the court finds that the ~~a~~ party seeking alimony has a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5), (6), and (7) ~~(5)-(8)~~, the court shall consider all relevant factors, including, but not limited to:

(a) The standard of living established during the marriage, including the needs and necessities of life for each party after the dissolution of marriage, taking into consideration the presumption that both parties will have a lower standard of living after the dissolution of marriage than the standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of each party.

(d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.

(e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of either ~~the other~~ party.

(g) The responsibilities each party will have with regard to any minor children whom the parties ~~they~~ have in common.

(h) The tax treatment and consequences to both parties of an ~~any~~ alimony award~~, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment~~.

(i) All sources of income available to either party,

including income available to either party through investments of any asset held by that party.

(j) Any other factor necessary for ~~to do~~ equity and justice between the parties if such factor is specifically identified in the award with findings of fact justifying the application of such factor.

(4)~~(3)~~ To the extent necessary to protect an award of alimony, the obligee may ~~court may order any party who is ordered to pay alimony to~~ purchase or maintain a life insurance policy on the obligor's life in an amount adequate to ~~or a bond, or to otherwise~~ secure such alimony award ~~with any other assets which may be suitable for that purpose~~. If the obligee purchases a life insurance policy, the obligor shall cooperate in the process of procuring the issuance and underwriting of the life insurance policy.

~~(4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.~~

(5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award of bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony

terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount or duration.

(6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or

2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

(c) The length of an award of rehabilitative alimony may not exceed 5 years or the limitations for durational alimony as provided in subsection (7), whichever period of time is shorter.

(d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan if the plan is completed before the length of the award of rehabilitative alimony expires.

(7)(a) Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time ~~following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis~~. An award of durational alimony terminates upon the death of either party or

upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances or upon a finding that a supportive relationship exists or existed between the obligee and another person in accordance with s. 61.14. ~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not~~ exceed 50 percent of the length of the marriage. For purposes of this subsection, the length of a marriage is the period of time beginning on the date of marriage and ending on the date an action for dissolution of marriage is filed.

(b) When awarding durational alimony, the court must make written findings that an award of another type of alimony, or a combination of the other forms of alimony, is not appropriate.

(c) The amount of durational alimony is the amount determined to be the obligee’s reasonable need or 25 percent of the difference between the parties’ net incomes, whichever amount is less.

(8) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:

(a) The party seeking alimony has not reached the age to qualify for any social security retirement benefits; and

(b) As a result of the dissolution of marriage, the party seeking alimony would, based on the income and assets available after the dissolution is final, meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409 and the related rules in effect on March 1, 2020.

(9)(a) Notwithstanding any other provision of law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party’s monthly net income.

(b) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually being paid.

(c) If the obligee alleges that a physical disability has impaired his or her capability to earn the income imputed by the court, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding~~

~~that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances~~.

(10)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(11) The court shall consider any alimony payments made to the obligee after the date of filing of a petition for dissolution of marriage, either voluntarily or pursuant to a court order, in determining the amount and length of an award of rehabilitative or durational alimony.

(12) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2021, cases pending on appeal, and to any petitions for dissolution of marriage filed on or after July 1, 2021.

Section 3. Paragraph (c) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

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

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Unless otherwise agreed to by the parties, there is a presumption that equal time-sharing is in the best interests of a minor child common to both parties. This subparagraph applies to all actions filed on or after July 1, 2021 ~~There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child~~.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic

violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Regardless of whether ~~or not~~ there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

b. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

Section 4. Paragraphs (b) and (d) of subsection (1) of section 61.14, Florida Statutes, are amended, and paragraph (c) is added to subsection (11) and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed.

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

2. In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as “my husband,” ~~or~~ “my wife,” “my partner,” or “my fiance” or otherwise conducting themselves in a manner that evidences a permanent or longstanding committed and supportive relationship.

b. The period of time that the obligee has resided with the other person ~~in a permanent place of abode~~.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other’s company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

l. Whether the obligee and the other person are engaged to be married.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of ~~the provisions of~~ this paragraph.

~~(d) The department shall have authority to adopt rules to implement this section.~~

(11)

(c) An obligor’s subsequent remarriage or cohabitation does not constitute a basis for either party to seek a modification of an alimony award. An obligee may not seek modification to increase an award of alimony based on the income and assets of the obligor’s subsequent spouse or person with whom the obligor resides, and the obligor may not seek modification to reduce an award of alimony based on the obligor’s reliance upon the income and assets of the obligor’s subsequent spouse or person with whom the obligor resides.

(12)(a) An alimony award terminates when the obligor reaches full retirement age as determined by the United States Social Security Administration. However, if an obligor reaches full retirement age as determined by the United States Social Security Administration but has not paid durational alimony for a period equal to 50 percent of the length of the marriage, the court may require the obligor to continue to pay durational alimony, not to exceed 50 percent of the length of the marriage, only if the court determines that:

1. The party seeking alimony has not reached the minimum age to qualify for social security retirement benefits; and

2. As a result of the dissolution of marriage or the termination of alimony payments under this paragraph, the party seeking alimony would, based on the income and assets available after the dissolution of marriage is final, meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409 and the related rules in effect on March 1, 2020.

(b) If an obligor seeks to retire at an age that is reasonable for his or her profession or line of work, but before he or she reaches full retirement age as determined by the

United States Social Security Administration, the court may terminate an alimony award if it determines that the obligor’s retirement is reasonable. In determining whether the obligor’s retirement is reasonable, the court shall consider all of the following:

1. The obligor’s age and health.

2. The obligor’s motivation for retirement.

3. The obligor’s profession or line of work and the typical retirement age for that profession or line of work.

4. The obligee’s needs and necessities of life and the obligor’s needs and necessities of life.

5. The impact that a termination or reduction of alimony would have on the obligee. In determining the impact, the court must consider any assets accumulated or received by the obligee, including any income generated by such assets, since the final judgment of dissolution of marriage.

(c) Up to 12 months before the obligor’s anticipated retirement under paragraph (a) or paragraph (b), the obligor may file a petition to modify or terminate the alimony award, effective upon his or her actual retirement date. The court shall modify or terminate the alimony award after the obligor’s retirement unless the court makes written findings of fact under paragraph (b) that the obligor’s retirement is not reasonable.

(13) Any amount of social security or disability benefits or retirement payments received by an obligee subsequent to an initial award of alimony constitutes a change in circumstances for which an obligor may seek modification of an alimony award.

(14)(a) Agreements on alimony payments, voluntary or pursuant to a court order, which allow for modification or termination of alimony by virtue of either party reaching a certain age, income, or other threshold, or agreements that establish a limited period of time after which alimony is modifiable, are considered agreements that are expressly modifiable or eligible for termination for purposes of this section once the specified condition is met.

(b) The court shall apply this section to any action to modify or terminate an alimony award filed on or after July 1, 2021, or any action for which a final order has not been issued or an appeal to a district court of appeal has not been decided before July 1, 2021.

Section 5. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage;~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage,~~;~~ but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at an earlier date.

(2) If more than 365 days have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will result from granting a final judgment of dissolution of marriage, the court shall, upon request of either party, grant a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting the judgment, the court shall enter

temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court. This subsection applies to all petitions for dissolution of marriage filed on or after July 1, 2021.

Section 6. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

3-29-21
Meeting Date

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

1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Dissolution of Marriage

Name Barbara DeVane

Job Title

Address 625 E. Brevard St
Street

Tallahassee FL 32308
City State Zip

Phone 251-4282

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-29-21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1922

Meeting Date — Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Alimony Reform

Name: Camille Fiveash

Job Title:

Address: 5789 TRUWUCKAU (Street) — Phone: 8506861452

Milton (City) Fl (State) (Zip) — Email: Camillefiveash@gmail

Speaking: [ ] For [X] Against [ ] Information — Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing: Myself

Appearing at request of Chair: [ ] Yes [X] No — Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

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

SB 1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Alimony

Name Kristina Miller

Job Title Mother

Address 1757 Atlantic Brain Dr.
Street

AB Fl 32233
City State Zip

Phone 904-305-5055

Email gabr2788@bellsouth.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing My Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-29-21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1922

Meeting Date — Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: ALimony Reform

Name: Carla McAuliffe

Job Title: Self Employed

Address: 346 Oakridge T
Street

DEERFIELD BCH FL 33442
City State Zip

Phone: 954-553-0539

Email: carlamcauliffe@yahoo.com

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB1922

Meeting Date

Bill Number (if applicable)

Topic Alimony Reform SB1922

Amendment Barcode (if applicable)

Name Murielle Fournier

Job Title

Address 1058 Chinaberry Rd

Street

Phone 727 937 2055

Clearwater FL 33764

City State Zip

Email

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

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

Representing Self

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

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

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

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)

3/29/2021
Meeting Date

1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Alimony Reform

Name Leisa Athey

Job Title

Address
Street

Phone

City State Zip

Email

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)

~~4~~ 3/29
Meeting Date

1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic #1922 - Alimony

Name SARAH HOLMES

Job Title

Address Private
Street

City State Zip

Phone 850-671-1677

Email Sarah.holmes@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [X] Against
(The Chair will read this information into the record.)

Representing

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-29-21
Meeting Date

1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Dissolution of Marriage

Name Andrea Reid

Job Title Attorney

Address 2101 NW Corp Blvd Ste 315
Street

Boca Raton, FL 33431
City State Zip

Phone 561 948-5685

Email AReid@reidlawgroup.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA BAR Family Law Section

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)

3/29/21
Meeting Date

SB1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB1922 - Alimony

Name Natalie Willis

Job Title Physician

Address 8714 Thousand Pines Circle
Street

West Palm Beach, FL 33411
City State Zip

Phone 561-346-4219

Email nsobgyn@aol.com

Speaking: [X] 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 [X] No

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-29-2021 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1922

Meeting Date

Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Kim Cornelius

Job Title

Address 1187 Westwood Dr.

Street

Jax FL 32259

City State Zip

Phone 571-228-5616

Email Kimrogers2012@gmail.com

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 the Senator or Senate Professional Staff conducting the meeting)

Meeting Date: ______

Bill Number (if applicable): 1922

Amendment Barcode (if applicable): ______

Topic: Alimony Bill

Name: Joyce Smith

Job Title: ______

Address: 252 N. Bridge Creek Dr
Street

St. Johns FL 32259
City State Zip

Phone: 904-252-0933

Email: czardog1@comcast.net

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

Waive Speaking: [X] 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 the Senator or Senate Professional Staff conducting the meeting)

Meeting Date: ____________

Bill Number (if applicable): 1922

Amendment Barcode (if applicable): ____________

Topic: Alimony Reform

Name: Marc Johnson

Job Title: ____________

Address: 3207 W Morrison Ave (Street)

Tampa (City) FL (State) 33629 (Zip)

Phone: 813-240-2689

Email: mjohnson@lassonjohnsonlaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: Florida Family Fairness, 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 the Senator or Senate Professional Staff conducting the meeting)

Meeting Date: ____________

Bill Number (if applicable): 1922

Amendment Barcode (if applicable): ____________

Topic: Alimony Reform

Name: George Smith

Job Title: Retired

Address: 252 N. Bridge Creek Dr
Street

Saint Johns FL 32259
City State Zip

Phone: 904 293 8722

Email: [illegible]@comcast.net

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

3-24-21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1922

Meeting Date — Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic ALIMONY REFORM

Name JOEL C CORNELIUS

Job Title AERO - ENGINEER

Address 1187 WESTWOOD DR — Phone ~~202~~ 2~~B~~2-500-3713

Street

JAX Fl 32254 — Email

City State Zip

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

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

Representing

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: ____________

Bill Number (if applicable): 1922

Amendment Barcode (if applicable): ____________

Topic: ALIMONY REFORM

Name: VERNON ASKEGARD

Job Title: ____________

Address: 10624 PECAN DR.
Street

FAIRHOPE AL 36532
City State Zip

Phone: 701-541-0371

Email: VASKEGARD39@GMAIL.COM

Speaking: [x] 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 [x] No

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/21
Meeting Date

SB1922
Bill Number (if applicable)

Topic SB1922

Amendment Barcode (if applicable)

Name Sonia Delgado

Job Title Teacher

Address
Street

Ocala FL
City State Zip

Phone 619-408-5772

Email sonia.delgado@century link.net

Speaking: [x] 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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

March 29, 2021
Meeting Date

SB 1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Dissolution of Marriage

Name: Andrea Tovar

Job Title: Consultant, Corcoran Partners

Address: 112 E. Jefferson Street
Street

Tallahassee — FL — 32301
City — *State* — *Zip*

Phone: 786-357-5533

Email: andrea@ corcoranpartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: American Academy of Matrimonial Lawyers (AAML)

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)

Duplicate

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

March 29, 2021
Meeting Date

SB 1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Dissolution of Marriage

Name Shannon Novey, Esq.

Job Title Attorney

Address 851 E Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-224-2000

Email ShannonNovey@ NoveyLaw.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing American Academy of Matrimonial Lawyers (AAML)

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)

Duplicate

Judiciary

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/2021
Meeting Date

SB 1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Dissolution of Marriage

Name TRISH NEELY

Job Title DIRECTOR

Address 2024 SHANGRI LA LANE
Street

Phone 850 3223317

TALLY FL 32303
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LEAGUE WOMEN VOTERS

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)

March 29, 2021
Meeting Date

SB 1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Alimony Reform

Name Dissolution of Marriage

Job Title

Address 1219 Sterling Pt
Street

Gulf Breeze FL 32563
City *State* *Zip*

Phone 850 982-8736

Email

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

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

Representing self

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

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

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

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)

3-29-21
Meeting Date

SB 1922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Alimony Reform - Dissolution of Marriage

Name Lynn Gray

Job Title

Address PO Box 1024
Street

Pensacola, FL 32591
City State Zip

Phone 850 619 3407

Email —

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

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

Representing

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

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

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

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

S-001 (10/14/14)

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 Judiciary

BILL: CS/CS/SB 716

INTRODUCER: Judiciary Committee; Health Policy Committee; and Senator Book

SUBJECT: Consent for Pelvic Examinations

DATE: March 30, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Fav/CS**
2.	Bond	Cibula	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 716:

- Amends, narrows, and simplifies the definition of "pelvic examination";
- Amends current law requiring written consent for all pelvic examinations performed by health care practitioners and trainees to require written consent for anesthetized or unconscious patients and to require verbal consent from any conscious patient, with exceptions;
- Modifies the current exception allowing an examination to avert a serious risk of bodily impairment to simply refer to the statute on emergency services and care;
- Adds three new exceptions, thereby allowing an examination without consent, related to emergency medical conditions, a child protective investigation, and certain criminal offenses against a child; and
- Provides that a single written consent for a pelvic examination may authorize multiple health care practitioners or students to perform a pelvic examination on a pregnant woman having contractions.

The bill is effective July 1, 2021.

II. Present Situation:

The Department of Health

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.[1] The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the regulatory boards[2] and professions within the DOH.[3]

Pelvic Examinations

In Florida, allopathic and osteopathic physicians, autonomous advanced practice registered nurses (autonomous APRNs), APRNs working under a protocol with a supervising physician whose practice includes a pelvic examination, licensed midwives, and physician assistants supervised by a physician whose practice includes pelvic examinations, may perform pelvic examinations and are subject to regulation by their respective board or council.[4]

Pelvic Examinations on Unconscious or Anesthetized Patients

In recent years, articles have detailed reports of medical students performing pelvic examinations, without consent, on women who are anesthetized.[5] This practice has been common since the late 1800s, and in 2003, a study reported that 90 percent of medical students who completed obstetrics and gynecology rotations at four Philadelphia-area hospitals performed pelvic examinations on anesthetized patients for educational purposes.[6]

Several medical organizations have taken positions that pelvic examinations under anesthesia by students in a teaching environment should require the patient's informed consent:

---

[1] Section 20.43, F.S.

[2] Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH, MQA.

[3] Section 20.43, F.S.

[4] *Supra* note 2; and chs. 458, 459, 464, and 467, F.S.

[5] For examples, *see:* Paul Hsieh, *Pelvic Exams on Anesthetized Women Without Consent: A Troubling and Outdated Practice*, FORBES (May 14, 2018), *available at* https://www.forbes.com/sites/paulhsieh/2018/05/14/pelvic-exams-on-anesthetized-women-without-consent-a-troubling-and-outdated-practice/#74d152df7846 (last visited Mar. 8, 2021); Dr. Jennifer Tsai, *Medical Students Regularly Practice Pelvic Exams on Unconscious Patients. Should They?*, ELLE (June 24, 2019), *available at* https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/ (last visited Mar. 8, 2021); Lorelei Laird, *Pelvic Exams Performed without Patients' Permission Spur New Legislation*, ABA JOURNAL (Sept. 2019), *available at* http://www.abajournal.com/magazine/article/examined-while-unconscious (last visited Mar. 8, 2020); and Amanda Eisenberg, *New Bills Would Ban Pelvic Exams without Consent*, POLITICO (March, 2019), *available at* https://www.politico.com/states/new-york/albany/story/2019/03/13/new-bills-would-ban-pelvic-exams-without-consent-910976 (last visited Mar. 8, 2021).

[6] John Duncan, Dan Luginbill, Matthew Richardson, Robin Fretwell Wilson, *Using Tort Law to Secure Patient Dignity: Often Used as Teaching Tools for Medical Students, Unauthorized Pelvic Exams Erode Patient Rights, Litigation Can Reinstate Them*, 40 TRIAL 42 (Oct. 2004), *available at* https://www.researchgate.net/publication/256066192_Using_Tort_Law_to_Secure_Patient_Dignity (last visited Mar. 8, 2021).

- The American Medical Association Council on Ethical and Judicial Affairs recommends that, in situations where the patient will be temporarily incapacitated (e.g., anesthetized) and where student involvement is anticipated, involvement should be discussed before the procedure is undertaken, whenever possible.[7]
- The Association of American Medical Colleges, reversing its prior policy position, offered that "performing pelvic examinations on women under anesthesia, without their knowledge or approval … is unethical and unacceptable."[8]
- The Committee on Ethics of the American College of Obstetricians and Gynecologists resolved that "pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery."[9]

Forty-two states do not require the informed consent to pelvic examinations under anesthesia by students and residents. California, Hawaii, Illinois, Iowa, Maryland, Oregon, Utah, and Virginia prohibit unauthorized pelvic examinations.[10]

The Association of American Medical Colleges (AAMC) has found that most teaching hospitals inform patients that trainees will be involved in their care and, generally, patients approve of the trainees' involvement.[11] The chief health care officer for the AAMC notes that recent articles on unauthorized pelvic examinations rely on studies from more than 10 years ago and before more detailed informed consent forms were used.[12] Typically, students and residents practice pelvic examinations with special mannequins and standardized patients who are specifically trained for this purpose.[13]

Informed Consent

Informed consent for medical treatment is fundamental in both ethics and law.[14] Informed consent is a process in which a health care provider educates a patient about the risks, benefits,

---

[7] AMA Council on Ethical and Judicial Affairs, *Medical Student Involvement in Patient Care: Report of the Council on Ethical and Judicial Affairs*, AMA Journal of Ethics (March 2001), *available at* https://journalofethics.ama-assn.org/article/medical-student-involvement-patient-care-report-council-ethical-and-judicial-affairs/2001-03 (last visited Mar. 8, 2021).
[8] Robin Fretwell Wilson, *Autonomy Suspended: Using Female Patients to Teach Intimate Exams Without Their Knowledge or Consent*, 8 J OF HEALTH CARE LAW AND POLICY 240, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=880120 (last visited Mar. 8, 2021).
[9] American College of Obstetricians and Gynecologists, Committee on Ethics, *Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training* (Aug. 2011), *available at* https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Professional-Responsibilities-in-Obstetric-Gynecologic-Medical-Education-and-Training?IsMobileSet=false (last visited Mar. 8, 2021).
[10] Lorelei Laird, *Pelvic Exams Performed without Patients' Permission Spur New Legislation*, ABA JOURNAL (September 2019), *available at* http://www.abajournal.com/magazine/article/examined-while-unconscious (last visited Mar. 8, 2021).
[11] Stacy Weiner, *What "Informed Consent" Really Means* (Jan. 24, 2019), *available at* https://www.aamc.org/news-insights/what-informed-consent-really-means (last visited Mar. 8, 2021).
[12] *Id.*
[13] *See* note 11.
[14] American Medical Association, *Informed Consent: Code of Medical Ethics Opinion 2.1.1*, *available at* https://www.ama-assn.org/delivering-care/ethics/informed-consent (last visited Mar. 8, 2021).

and alternatives of a given procedure or intervention.[15] A patient must be competent to make a voluntary decision about whether to undergo a procedure.

The idea of informed consent was established in 1914 in a case in which a patient was operated on without her consent.[16] In determining whether she had a cause of action against the hospital in which the operation was formed, the judge in the case opined that "every human being of adult years and sound mind has a right to determine what shall be done to his own body, and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable for damages."[17]

Informed Consent Relating to Forensic Examinations

When sexual assault occurs, the effective collection of evidence is of paramount importance to the successful prosecution of sex offenders.[18]

Florida law mandates the reporting of abuse and neglect of both adults and children.[19,20] When the abuse or neglect involves sexual abuse or violence, human trafficking, sexual battery, prostitution, lewdness, indecent exposure, or obscenity, a forensic medical examination, sometimes including a pelvic examination, is often involved.

A forensic medical examination serves two purposes. The first is to address the medical needs of individuals disclosing sexual assault. This is accomplished, with the patient's consent, by:[21]
- Evaluating and treating injuries;
- Conducting prompt examinations;
- Providing support, crisis intervention, and advocacy;
- Providing prophylaxis against sexually transmitted infections;
- Assessing female patients for pregnancy risk and discussing treatment options, including reproductive health services; and
- Providing follow-up care for medical and emotional needs.

The other purpose is to address justice system needs through forensic evidence collection. This is accomplished by:
- Obtaining a history of the assault;
- Documenting exam findings;
- Properly collecting, handling, and preserving evidence;

---

[15] William Gossman, Imani Thornton, John Hipskind, *Informed Consent* (Aug. 22, 2020), *available at* https://www.ncbi.nlm.nih.gov/books/NBK430827/ (last visited Mar. 8, 2021).
[16] *Schloendorff v. Society of N.Y. Hosp.*, 105 N.E. 92, 93 (N.Y. 1914).
[17] *Id.*
[18] *United States Department of Justice A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents*, 2nd. Ed., Apr. 2013, *available at* https://www.ojp.gov/pdffiles1/ovw/241903.pdf (last visited Mar. 18, 2021).
[19] Section 39.201, F.S.
[20] Section 415.1034, F.S.
[21] State of Florida, Office of Attorney General, 2015, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination, available at http://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/$file/ACSP.pdf* (last visited Mar. 18, 2021).

- Interpreting and analyzing findings; and
- Subsequently presenting findings and providing factual and expert opinion related to the exam and evidence collection.

Victims of sexual violence, like any other individual, must give informed consent to a forensic medical examination before the examination may be performed. A health care practitioner, a medical student, or any other student receiving training as a health care practitioner may not perform a pelvic examination on a patient without the written consent of the patient or the patient's legal representative executed specific to, and expressly identifying, the pelvic examination, unless:

- A court orders performance of the pelvic examination for the collection of evidence; or
- The pelvic examination is immediately necessary to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the patient.[22]

In the event that the victim is a child, or an adult who lacks the capacity to give consent, the victim's legal representative may sign the consent forms. If the victim is unable to consent due to being incapacitated, the examiner may not commence with the examination without a court order.[23]

Florida Requirements for Informed Consent

In Florida the only general law on medical consent appears in ch. 766, F.S., Medical Malpractice and Related Matters.[24] However, Florida physicians and physicians practicing within a postgraduate training program approved by the Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM) must explain the medical or surgical procedure to be performed to the patient and obtain the informed consent of the patient. The physician is not required to obtain or witness the signature of the patient on a written form evidencing informed consent, and there is no requirement that the patient use a written document, although hospitals and facilities where procedures are performed typically require consent in writing.[25,26]

In 2020 the Florida Legislature created s. 456.51, F.S., *Consent for pelvic examination,*[27] in response to media reports that medical students may be performing pelvic examinations on

---

[22] Section 456.51, F.S.
[23] *Id.*
[24] Section 766.103, F.S., provides: No recovery shall be allowed in any court in this state against any physician, chiropractor, podiatric physician, dentist, APRN, or PA in an action brought for treating, examining, or operating on a patient without his or her informed consent when: 1) The action of the practitioner in obtaining the consent of the patient, or another person authorized to give consent for the patient, was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community; and 2) A reasonable person, from the information provided under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, recognized among practitioners in the same or similar community who perform similar treatments or procedures; or 3) The patient would reasonably, under all the surrounding circumstances, have undergone the treatment or procedure had he or she been advised by practitioner in accordance with the provisions of the first.
[25] Fla. Adm. Code R. 64B8-9.007, and 64B15-14.006 (2019).
[26] *See* The Joint Commission, Advisory on Safety Issues, Issue 21, (Feb. 2016), I*nformed Consent: More than Getting a Signature*, *available at* https://www.jointcommission.org/-/media/tjc/documents/newsletters/quick_safety_issue_twenty-one_february_2016pdf.pdf (last visited Mar. 8, 2021).
[27] CS/CS/SB 698, Ch. 2020-31, s. 3, Laws of Fla.

anesthetized or unconscious women without obtaining informed consent from the woman prior to anesthesia or from any other person who can provide consent.[28]

Section 456.51(1), F.S., defines a "pelvic examination" to include a series of tasks that encompass an examination of the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs using any combination of modalities, which may include, but need not be limited to, the health care provider's gloved hand or instrumentation. Under current law, a health care practitioner, medical student, or any other student receiving training as a health care practitioner is not permitted to perform a pelvic examination on a patient without the written consent of the patient or the patient's legal representative, executed specific to, and expressly identifying, the pelvic examination, unless:

- A court orders the performance of the examination for the collection of evidence; or
- The pelvic examination is immediately necessary to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function.

Following the enactment of Chapter 2020-31, s. 3, Laws of Florida (2020), conflicts in the medical community arose as to how the law's language should be interpreted, and a Petition for Declaratory Statement[29] was filed with the Florida Board of Medicine (BOM), requesting a determination of:

- Whether the definition of pelvic examination applies only to female patients or to males as well;
- Whether performance of surgery on the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs constitutes a pelvic examination;
- Whether a discrete visual examination of the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs constitutes a pelvic examination;
- Whether a pelvic examination requires separate written consents every time a pelvic examination was performed during a course of treatment; and
- Whether a pelvic examination in emergent circumstances required a written consent when the patient or a legal representative were unable to give consent.

The BOM, in a Final Order[30] to a Petition for Declaratory Statement filed by numerous physician organizations, answered the above questions regarding what constitutes a pelvic examination under s. 456.51, F.S., as follows:

- A pelvic examination applies only to female patients;
- Surgery on the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs does not constitute a pelvic examination; and
- Discrete visual examination of the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs does not constitute a pelvic examination.

---

[28] *See* Emma Goldberg, *She Didn't Want a Pelvic Exam. She Received One Anyway*, NEW YORK TIMES, Feb 17, 2020, updated Feb. 19, 2020, *available at* https://www.nytimes.com/2020/02/17/health/pelvic-medical-exam-unconscious.html (last visited Mar. 8, 2021).

[29] See Florida Department of Health, Board of Medicine, Final Order NO DOH-20-1553-DS-MQA filed Oct. 9, 2020, *available at* https://s3.amazonaws.com/thenewsserviceofflorida/web/dist/downloads/2020/10/DOH_20-1553_DS_Doug_Murphy__FMA__etc__1_.pdf (last visited Mar. 8, 2021).

[30] *Id.*

The BOM declined to answer the questions regarding informed consent.

III. Effect of Proposed Changes:

CS/CS/SB 716:

- Amends, narrows, and simplifies the definition of "pelvic examination," thereby narrowing the scope and application of s. 456.51, F.S., to:
  - Specify that the term means a manual examination of the organs of the female reproductive system, whether by hand or by instrument.
  - Exclude from the definition a visual assessment, imaging, or a nondiagnostic medical or surgical procedure.
- Amends current law requiring written consent for all pelvic examinations performed by health care practitioners, medical students, and trainees, to require written consent only for anesthetized or unconscious patients.
- Requires that informed verbal consent to a pelvic examination be obtained from any conscious patient, regardless of whether there is a written authorization.
- Amends the current-law exception pertaining to cases in which a pelvic examination is immediately necessary to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function, to instead pertain to cases in which the examination is necessary for the provision of emergency services and care as defined in s. 395.002, F.S.[31]
- Creates three new exceptions, in addition to those found in current law, for situations in which a pelvic examination is administered pursuant to:
  - An emergency medical condition.[32]
  - A child protective investigation under ch. 39, F.S.
  - A criminal investigation of an alleged violation related to child abuse or neglect under statutes that address human trafficking, sexual battery, prostitution, lewdness, indecent exposure, child abuse, or obscenity.
- Allows a single written consent form to be used in a licensed hospital to authorize multiple health care practitioners or students performing pelvic examinations on a pregnant woman having contractions.

The bill effective July 1, 2021.

---

[31] Section 395.002(9), F.S., defines "emergency services and care" to mean medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.

[32] Section 395.002(8), F.S., defines "emergency medical condition" to mean a medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following: 1. Serious jeopardy to patient health, including a pregnant woman or fetus. 2. Serious impairment to bodily functions. 3. Serious dysfunction of any bodily organ or part. With respect to a pregnant woman, the term also means: 1. That there is inadequate time to effect safe transfer to another hospital prior to delivery; 2. That a transfer may pose a threat to the health and safety of the patient or fetus; or 3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.51 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 Judiciary on March 29, 2021:
The committee substitute changes the definition of exam to only include manual examination of any part of the female reproductive system; adds that verbal consent to an exam must be solicited from a conscious patient even if a prior written consent is on file; moves the part of the procedure exception into the definition of an exam; removes the general concept of multiple exams being authorized by one written authorization; and creates a limited authority for multiple consents utilizing one written consent that only applies to a woman in a hospital having contractions.

CS by Health Policy on March 17, 2021:
The CS provides two new exceptions to the requirement that written consent be obtained before a pelvic examination may be performed, in addition to those found in current law, for cases in which the examination is administered pursuant to:
- A child protective investigation under ch. 39, F.S.; and
- A criminal investigation of an alleged violation, related to child abuse or neglect, of statutes that address human trafficking, sexual battery, prostitution, lewdness, indecent exposure, or obscenity.

B. Amendments:

None.

190574

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 456.51, Florida Statutes, is amended to read:

456.51 Consent for pelvic examinations.—

(1) As used in this section, the term “pelvic examination” means a manual ~~the series of tasks that comprise an~~ examination of the organs of the female reproductive system using ~~vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external~~

190574

~~pelvic tissue or organs using any combination of modalities, which may include, but need not be limited to,~~ the health care provider's gloved hand or instrumentation. The term does not include a visual assessment, imaging, or a nondiagnostic medical or surgical procedure.

(2) A health care practitioner, a medical student, or any other student receiving training as a health care practitioner may not perform a pelvic examination on an anesthetized or unconscious ~~a~~ patient without the written consent of the patient or the patient's legal representative executed specific to, and expressly identifying, the pelvic examination. If the patient is conscious, informed verbal consent must be obtained for the pelvic examination in addition to any written consent obtained. Consent is not required if~~, unless~~:

(a) A court orders performance of the pelvic examination for the collection of evidence; ~~or~~

(b) The pelvic examination is ~~immediately~~ necessary for the provision of emergency services and care as defined in s. 395.002;

(c) The patient has an emergency medical condition as defined in s. 395.002;

(d) The pelvic examination is administered pursuant to a child protective investigation under chapter 39; or

(e) The pelvic examination is administered pursuant to a criminal investigation of an alleged violation related to child abuse or neglect under s. 787.06(3)(a)1., (c)1., (f)1., or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847 ~~to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of~~

190574

~~the patient~~.

(3) A health care practitioner, a medical student, or any other student receiving training as a health care practitioner who is providing care to a pregnant woman having contractions in a facility licensed under chapter 395 need only obtain written consent from the patient to perform the initial pelvic examination. The written consent form must inform the patient that multiple pelvic examinations may be conducted during the course of her care and treatment at the facility.

Section 2. This act shall take effect July 1, 2021.

================= 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 consent for pelvic examinations; amending s. 456.51, F.S.; revising the definition of the term “pelvic examination”; revising the circumstances under which a pelvic examination may be performed without consent; providing that certain health care practitioners and students need only obtain written consent for the initial pelvic examination for certain patients under certain circumstances; requiring such written consent form to inform the patient that multiple pelvic examinations may be conducted during the course of care and treatment; providing an effective date.

By the Committee on Health Policy; and Senator Book

A bill to be entitled

An act relating to consent for pelvic examinations; amending s. 456.51, F.S.; revising the definition of the term “pelvic examination”; revising the circumstances under which a pelvic examination may be performed without written consent; authorizing written consent for a pelvic examination to be obtained as a part of a general consent form and to allow multiple health care practitioners or students to perform the examination; providing an effective date.

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

Section 1. Section 456.51, Florida Statutes, is amended to read:

456.51 Consent for pelvic examinations.—

(1) As used in this section, the term “pelvic examination” means ~~the series of tasks that comprise~~ an examination of the organs of the female internal reproductive system ~~vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs using any combination of modalities, which may include, but need not be limited to, the health care provider’s gloved hand or instrumentation~~.

(2) A health care practitioner, a medical student, or any other student receiving training as a health care practitioner may not perform a pelvic examination on an anesthetized or unconscious ~~a~~ patient without the written consent of the patient or the patient’s legal representative ~~executed specific to, and expressly identifying, the pelvic examination~~, unless:

(a) A court orders performance of the pelvic examination for the collection of evidence; ~~or~~

(b) The pelvic examination is ~~immediately~~ necessary for the provision of emergency services and care as defined in s. 395.002 ~~to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the patient~~;

(c) The pelvic examination is administered pursuant to a child protective investigation under chapter 39;

(d) The pelvic examination is administered pursuant to a criminal investigation of an alleged violation related to child abuse or neglect under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847; or

(e) The pelvic examination is indicated in the standard of care for a procedure to which the patient or the patient’s legal representative has consented.

(3) Written consent for a pelvic examination may be obtained as part of a general consent form if it is included as its own provision. One written consent form may be used to authorize multiple health care practitioners or students to perform a pelvic examination.

Section 2. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 17, 2021

I respectfully request that **Senate Bill 716**, relating to Consent for Pelvic Examinations, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you for your consideration.

Lauren Book

Senator Lauren Book
Florida Senate, District 32

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-29-21
Meeting Date

716
Bill Number (if applicable)

190574
Amendment Barcode (if applicable)

Topic: Consent on Pelvic Exams

Name: Barbara DeVane

Job Title: ______

Address: ______
Street

Phone: ______

______
City State Zip

Email: ______

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/29/2021
Meeting Date

716
Bill Number (if applicable)

190574
Amendment Barcode (if applicable)

Topic: Consent for Pelvic Exams

Name: Theresa Prichard

Job Title: Associate Director and General Counsel

Address: 1820 East Park Avenue Suite 100
Street

Tallahassee — FL — 32301
City — State — Zip

Phone: 850-363-3728

Email: tprichard@fcasv.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Florida Council Against Sexual Violence

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021
Meeting Date

716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consent for Pelvic Examination

Name Jan Gorrie

Job Title Lobbyist

Address 201 E. Park Ave, 5th Floor
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 813-334-5288

Email Jan@ballardpartner

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Council of Medical School Deans

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/29/2021
Meeting Date

716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Consent for Pelvic Examinations - 2021

Name: Juliette Kong

Job Title: Chief Executive Officer

Address: 5647 North Ronald Reagan
Street

Orlando — FL — 32828
City — *State* — *Zip*

Phone: 407-324-3036

Email: kong@kidshouse.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Kids House of Seminole

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consent for Pelvic Examinations

Name Steve Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 878-7364

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical 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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/29/21
Meeting Date

SB 716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consent for Pelvic Examinations

Name Jason Rodriguez

Job Title State Government Relations Manager

Address 2985 Drew Street
Street

Clearwater FL 33759
City *State* *Zip*

Phone (727)519-1885

Email jason.rodriguez@baycare.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BayCare Health System

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)

3-29-21
Meeting Date

716
Bill Number (if applicable)

Topic Consent for Pelvic Exams

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title

Address 625 E. Brevard St
Street

Phone 251-4280

Tallahassee Fl 32308
City State Zip

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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)

3/29/21
Meeting Date

716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: CONSENT FOR PELVIC EXAMS

Name: Zachary Hoover

Job Title: Manager, State Government Affairs

Address: 1414 KUHL AVE
Street

ORLANDO, FL 32806
City, State, Zip

Phone: 215-913-0285

Email: zach.hoover@ORLANDOHEALTH.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: ORLANDO HEALTH

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

3/29/21
Meeting Date

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

716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Jared Willis

Job Title Lobbyist

Address 200 W College Ave Ste 201
Street

City State Zip

Phone 284-1996

Email jwillis@strategosgroup.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Nemours Children's Hospital

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)

3-29-21
Meeting Date

716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 716 - Consent for Pelvic Exams

Name Jarrod Fowler

Job Title Director of Health Care Policy

Address 1430 Piedmont Dr. E.
Street

Phone 850-224-6496

Tallahassee FL 32308
City State Zip

Email jfowler@flmedical.org

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

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Florida Medical Association

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

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

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

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

S-001 (10/14/14)

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 Judiciary

BILL: CS/SB 742

INTRODUCER: Banking and Insurance Committee and Senator Perry

SUBJECT: Insurance

DATE: March 26, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 742 amends several insurance-related statutes. Specifically, the bill:

- Directs the Florida Hurricane Catastrophe Fund to provide reimbursement for a loss under collateral protection insurance if the coverage is in an amount equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy, equal to the coverage amount that the homeowner has been notified of, or equal to the coverage amount that the homeowner requests from the collateral protection insurer.
- Provides that service of process is valid and binding on an insurer upon delivery of the process documents to the insurer or upon the insurer receiving notice that the information is available on a secured network.
- Authorizes associations, trusts, and pools formed to provide self-insurance for public entities to establish a quorum and conduct public business through electronic or virtual means.
- Provides that the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates, LLC is an acceptable qualification for the purpose of customer representative licensure.
- Provides that an all-lines adjuster who is appointed and employed by an insurer's affiliate may serve as a company employee adjuster for the purpose of adjusting claims.
- Requires an admitted and nonadmitted group health insurer's loss run statement to include certain information, requires an admitted and nonadmitted personal lines insurer to provide loss run statements within 15 days of an insured's request after first providing information on

how to obtain a loss run statement from a consumer reporting agency, and authorizes an exemption for admitted and nonadmitted life insurers under the section.

- Allows a residential property insurer's rate filing to estimate projected hurricane losses by using a weighted or straight average of two or more methods or models approved by the Florida Commission on Hurricane Loss Projection Methodology.
- Provides residential property insurers with discretion regarding whether to include positive and negative rate factors based on building code enforcement in rate filings for residential property insurance.
- Authorizes a residential property insurer to file premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization.
- Authorizes a property insurer to require a policyholder who is constructing or retrofitting a structure to provide evidence of compliance with windstorm mitigation standards prior to receiving premium discounts, credits, or rate reductions allowed under the rating plan.
- Provides that past loss experience and prospective loss experience for insolvent insurers must be used in the determination and fixing of workers' compensation rates, and that data previously reported by insolvent insurers may be used to assess the impact on rates.
- Provides Citizens with discretion to offer wind-only policies to condominium associations when 50 percent or more of their units are rented more than eight times per year for a period of less than 30 days.
- Allows the electronic transmission of all policy documents and claims communications by an insurer when the policy is sold in a wholly electronic manner, provided the insurer provides the policyholder with a disclosure at the time of sale.
- Provides that the applicable laws and ordinances for purposes of determining law and ordinance coverage are those enacted on or before the date of the loss.
- Provides that an agent may export a flood insurance policy or endorsement to an eligible surplus lines insurer without first making a diligent effort to seek coverage from three or more authorized insurers.
- Provides that s. 627.7152, F.S., governing assignment agreements, applies to instruments that assign or transfer post-loss benefits to a service provider that provides scopes of service or provides inspection services.
- Provides that the term "assignment agreement" does not include fees collected by a public adjuster.
- Provides that an insurer may designate a name, mailing address, and email address to receive a notice to initiate litigation from an assignee.
- Requires that an automobile policy that does not provide coverage for bodily injury liability and property damage liability include notice accompanying the declarations page that the policy does not provide such coverages and does not comply with any financial responsibility laws. Such policies generally cover antique motor vehicles.
- Authorizes the exemption of licensed personal lines and general lines agent from salesperson licensing requirements to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and service agreement contracts.

The bill takes effect July 1, 2021, except as otherwise provided.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt[1] fund created in 1993[2] after Hurricane Andrew[3] as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)[4] and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)[5] of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

All insurers admitted to do business in this state writing residential property insurance, that includes wind coverage, must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.[6] The FHCF is authorized by statute to sell $17 billion of mandatory layer coverage.[7] Each insurer that purchases coverage may receive up to its proportional share of the $17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent[8] of the reimbursed losses for loss adjustment expenses.[9]

The FHCF must charge insurers the actuarially indicated premium[10] for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.[11] The actuarially indicated premium is an amount determined by the principles of actuarial science to be adequate to pay current and future obligations and expenses of the fund.[12] In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. Historically, FHCF coverage generally costs less than private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.[13]

---

[1] Section 215.555(1)(f), F.S.
[2] Chapter 93-409, Laws of Fla.
[3] Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), https://www.nhc.noaa.gov/1992andrew.html.
[4] State Board of Administration of Florida, *About the SBA*, https://www.sbafla.com/fsb/ (last visited March 23, 2021).
[5] Section 215.555(2)(e), F.S.
[6] *See* s. 215.555(4)(a), F.S.
[7] Section 215.555(4)(c)1., F.S.
[8] Section 215.555(4)(b)1., F.S.
[9] Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.
[10] Section 215.555(5)(a), F.S.
[11] *See*, *Florida Commission on Hurricane Loss Methodology*, https://www.sbafla.com/method/ (last visited March 23, 2021).
[12] Section 215.555(2)(a), F.S.
[13] State Board of Administration of Florida, Florida Hurricane Catastrophe Fund, *2016 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943 (last visited March 8, 2021).

When the moneys in the FHCF are or will be insufficient to cover losses, the law[14] authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.[15] Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.[16]

Reimbursement of Collateral Protection Insurance

Collateral protection insurance, sometimes referred to as "lender-placed" or "force-placed" insurance, is insurance that is placed by a lender, at the expense of the borrower, to protect the lender's security interest in property pursuant to a loan, such as a home mortgage. Collateral protection insurance is placed by the lender when it deems the homeowners' insurance insufficient, usually because the borrower's insurance policy is lapsed or cancelled. The FHCF covers policies of collateral protection insurance if the collateral protection insurance covers a personal residence and protects both the borrower's and the lender's financial interests in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowners policy.[17]

Service of Process

Florida's Chief Financial Officer[18] (CFO) is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., any unauthorized insurer under s. 626.906, F.S. or s. 626.937, F.S., domestic reciprocal insurers, fraternal benefit societies under ch. 632, F.S., warranty associations under ch. 634, F.S., prepaid limited health service organizations under ch. 636, F.S., and persons required to file statements under s. 628.461, F.S.[19]

Service of process on the CFO is made by mail, personal service, or internet-based transmission system created by the Department of Financial Services (DFS).[20] Upon receiving service of process, the CFO retains a record copy in paper or electronic form and promptly forwards one copy of the process documents to the insurer's designated process agent by registered or certified mail.[21] The CFO may also make the process documents available from a securing website

[14] Section 215.555(6), F.S.
[15] Section 215.555(6)(b), F.S.
[16] The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis. See Florida Hurricane Catastrophe Fund, *Fiscal Year 2009-2010 Annual Report*, 14, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/SBA_CATF_Annual_ReportFHCF_Final.pdf?ver=2016-06-08-121900-647 (last visited March 23, 2021).
[17] Section 215.555(2)(c), F.S.
[18] The CFO's assistant, deputy, or another person in charge of the office may also serve as the agent for service of process.
[19] Section 48.151(3), F.S.
[20] Id.
[21] Section 624.423(1), F.S.

created by DFS and provide notice of availability and retrieval instructions to the insurer's designated process agent under s. 624.307(9), F.S.

Under current law, service of process is considered valid and binding service on the insurer at such time as the process documents are served on the CFO and sent or made available to the insurer pursuant to s. 624.307(9), F.S., rather than at such time the process documents are received by the insurer.[22]

Electronic Meetings for Public Self-Insurers

Florida law authorizes two or more local governmental entities to enter into an interlocal agreement (fund) for the purpose of securing workers' compensation payments, or insuring or self-insuring real or personal property 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.[23]

For any fund created after October 1, 2004, the fund is subject to the requirements of group self-insurance funds for the first 5 years of its existence,[24] including participation in the Florida Self-Insurance Guaranty Association.[25] The Florida Self-Insurers Guaranty Association is exempt from certain public record requirements under s. 119.07(1), F.S., related to claims and minutes meetings, and certain public meeting requirements under s. 286.011, F.S.,[26] related to discussion to claims and other confidential information.

***Florida's* Public Records Law**

Section 286.011, F.S., declares all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken to be public meetings open to the public at all times. Any resolution, rule, or formal action taken in contravention of this provision is not considered binding.[27]

Customer Representatives

Florida law requires all customer representatives to be licensed by the Department of Financial Services (DFS)[28] and appointed by a general lines agent or general lines insurance agency.[29] Licensure requirements include age, residency, and one of the statutorily specified designations, accreditations, or educational degrees obtained from a list of approved institutions.[30]

[22] Section 624.423(3), F.S.
[23] Section 624.4622(1), F.S.
[24] Section 624.4622(3). F.S.
[25] Section 624.4621(9).
[26] Section 440.3851, F.S.
[27] Section 286.011, F.S.
[28] Section 626.7351, F.S.
[29] Section 626.7353(1), F.S.
[30] *See* note 28.

Insurance Adjusters

Florida law requires all insurance adjusters to be licensed by DFS and appointed by the appropriate entity or person[31] in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.[32]

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,[33] company employee adjusters,[34] and public adjuster apprentices.[35] The same adjuster may not be concurrently licensed as a pubic adjuster and an all-lines adjuster.[36] In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.[37]

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.[38] Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.[39]

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.[40]

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss or damage.[41]

Loss Run Statements

Loss run statements are reports produced by an insurer or consumer reporting agency containing the claims history of a policyholder with an authorized or unauthorized insurer for the preceding

[31] *See* s. 626.015(4), F.S., defining "appointment" as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.
[32] Section 626.171, F.S.
[33] Section 626.855, F.S.
[34] Section 626.856, F.S.
[35] Section 626.8561, F.S.
[36] Section 626.864(2), F.S.
[37] Section 626.864(3), F.S
[38] Section 626.854(1), F.S.
[39] Section 626.8548, F.S.
[40] Section 626.855, F.S.
[41] Section 626.856, F.S.

5 years or, if the claims history is less than 5 years, a complete claims history with the insurer.[42] Under Florida law, the reports must contain the policy number, period of coverage, number of claims, the paid losses on all claims, and the date of each loss.[43] Reports are not required to include supporting claims file documentation such as copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege.[44] Upon receipt of the policyholder's written request, the insurer has 15 days to provide the loss run statement or information on how to obtain the loss run statement at no cost through a consumer reporting agency.[45]

Release of Claims Experience Under Group Health Insurance Policies

In addition to the statutory provisions governing loss run statements described above, group health insurers must also provide the policyholder with claims experience information required for bid for the previous 3 years or for the entire period of coverage.[46] Required information includes, but is not limited to, claim experience, premiums paid, number of insureds on a monthly basis, and dependent status. The insurer is not required to disclose any information deemed confidential by law.[47] Upon receipt of the policyholder's written request, the insurer has 21 days to provide the claims experience.

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law[48] governing property, casualty, and surety insurance which covers subjects of insurance resident, located, or to be performed in this state.[49] The Rating Law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.[50] 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.[51]

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 30 days after the effective date of a new rate, which is considered a "use and file" rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The office makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience.

[42] *See* sections 626.9202 and 627.444, F.S.
[43] Sections 626.9202(1) and 627.444(1), F.S.
[44] *Id*.
[45] Sections 626.9202(2) and 627.444(2), F.S.
[46] Section 627.6647(1), F.S.
[47] Section 627.6647(2), F.S.
[48] Section 627.011, F.S.
[49] Section 627.021, F.S.
[50] Section 627.062(1), F.S.
[51] Section 627.041, F.S.

- 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.
- A reasonable margin for underwriting profit and contingencies.
- Other relevant factors that affect the frequency or severity of claims or expenses.

Florida Commission on Hurricane Loss Projection Methodology

Projected hurricane losses in a rate filing must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology.[52] The commission consists of 12 members with expertise in the elements that are used to develop computer models to estimate hurricane and flood loss. Members of the commission include State University System faculty experts in insurance finance, statistics, computer system design, meteorology, and structural engineering; three actuaries; the insurance consumer advocate; the director of the FHCF; the Executive Director of Citizens Property Insurance Corporation; and the Director of the Division of Emergency Management.[53]

Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.[54] Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.[55] Upon their filing by an insurer or rating organization, OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,[56] which in turn may be used in rate filings under the Rating Law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance, roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.[57]

[52] Section 627.062(2)(b)11., F.S.
[53] Section 627.0628(2)(b), F.S.
[54] Section 627.062(2)(j), F.S.
[55] Section 627.0629(1), F.S.
[56] *Id*.
[57] *Id*.

Workers' Compensation Reporting Requirements and Rating Factors

Florida law currently requires workers' compensation insurers to record and report certain loss, expense, and claims experience to aid OIR in making determinations concerning the adequacy of worker's compensation experience for ratemaking purposes.[58] Additionally, insurers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification.
- Manual premiums by classification.
- Standard premiums by classification.
- Losses by classification and injury type.
- Expenses.[59]

Section 627.072, F.S., in turn governs the admissibility of factors to be used in the determination and fixing of workers' compensation insurance rates. The following factors are used for such purpose:

- The past loss experience and prospective loss experience within and outside Florida;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;
- Dividends, savings, and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both countrywide and those specifically applicable to Florida; and
- All other relevant factors, including judgment factors, within and outside of Florida.[60]

Insurers satisfy the reporting requirements above by providing their data to the National Council on Compensation Insurance, Inc. (NCCI).[61] When an insurer goes into receivership due to insolvency, it ceases reporting to NCCI and, therefore, its data is no longer reported to OIR and not used in the determination and fixing of rates.

Citizens Property Insurance Corporation (Citizens)

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.[62] Citizens is not a private insurance company.[63] Citizens was statutorily created in 2002 when the 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). Citizens operates in accordance with the

---

[58] Section 627.914(1), F.S.
[59] Section 627.914(2), F.S.
[60] Section 627.072(1), F.S.
[61] *See* Rule 69O-189.0055, F.A.C.
[62] Admitted market means insurance companies licensed to transact insurance in Florida.
[63] Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.

provisions in s. 627.351(6), F.S., and is governed by a nine-member Board of Governors[64] that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. The Governor appoints three members to the board, one of whom serves solely to advocate for consumers. Citizens is subject to regulation by the OIR.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.[65] Assets may not be commingled or used to fund losses in another account.[66]

- **The Personal Lines Account (PLA)** offers personal lines residential policies that provide comprehensive, multiperil 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 homeowners, dwellings, tenants, and condominium unit owner's policies.
- **The Commercial Lines Account (CLA)** offers commercial lines residential and nonresidential 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 nonresidential policies covering business properties.
- **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 multiperil policies.[67]

Citizens Eligibility for Commercial Residential Wind-Only Coverage

In 2014,[68] the Legislature enacted changes to the statutes governing Citizens that prohibited residential condominium associations from obtaining commercial residential property insurance policies from Citizens which cover damage only from wind if 50 percent or more of the condominiums in the association are rented more than eight times a year for less than 30 days. These changes were intended to provide clarity to the classification of transient occupancy risks and remove inconsistencies between commercial residential and commercial non-residential

[64] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.
[65] The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.
[66] Section 627.351(6)(b)2b., F.S.
[67] In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.
[68] Chapter 2015-140, L.O.F.

properties.[69] Condominiums are presently able to obtain Citizens policies that cover damage from multiple perils, including wind.

Delivery of Insurance Policies and Claims Communications

Under s. 627.421, F.S., Florida law currently requires most insurers[70] to deliver, mail, or electronically transmit the insurance policy to the policyholder within 60 days of such coverage taking effect. Policyholders of personal lines policies may elect electronic transmission of policy documents; however, for commercial lines policies, the policyholder must decline electronic transmission by written or electronic communication to the insurer. The policyholder is further entitled to a paper copy of the policy upon request.[71]

Florida law varies with respect to electronic and nonelectronic transmission of claims communications. In some cases, e.g, written proof of loss, claims communications must be nonelectronic,[72] while on others, e.g. payment of health insurance claims, claims communication may be electronic or nonelectronic.[73]

Law and Ordinance Coverage

Under s. 3401.7.2.6 of the Florida Building Code, when repairs and alterations amounting to more than 50 percent of the value of the existing building are made during a 12-month period, the building or structure must be made to conform to the requirements for a new building or structure or be entirely demolished. As OIR's *Law and Ordinance Coverage* study[74] noted, this can present significant insurance challenges to insurers and policyholders alike because the cost of reconstruction to ensure compliance with the current building codes usually exceeds policy limits.

Following a covered loss to a dwelling that requires repair or replacement, law and ordinance coverage pays the increased construction costs as the result of newer building code enforcement or ordinances. However, insurers are not required to pay the full costs associated with newer building code compliance. Under s. 627.7011, F.S., governing law and ordinance coverage for homeowners' insurance policies, the insurer is required to offer the policyholder options for law and ordinance coverage limited to 25 percent or 50 percent of the dwelling value. If the policyholder does not provide a written rejection for law and ordinance coverage, the policy is deemed to provide law and ordinance covered limited to 25 percent of the dwelling value.

---

[69] House Regulatory Affairs Committee, *House Bill 1089 Analysis* (June 16, 2014) https://www.flsenate.gov/Session/Bill/2014/1089/Analyses/h1089z1.IBS.PDF (last visited February 8, 2021).
[70] Part II of ch. 627, F.S., exempts reinsurers, wet marine and transportation, title, and credit life of credit disability insurers from the delivery provisions of s. 627.421, F.S.
[71] Section 627.421(1), F.S.
[72] Section 627.425, F.S.
[73] Section 627.6131, F.S.
[74] Florida Office of Insurance Regulation, *Law and Ordinance Coverage*, 6 (January 2006), https://www.floir.com/siteDocuments/OIRLaw_Ordinance_Cov_Study_13006.pdf (last visited March 24, 2021).

Replacement Cost Holdbacks Under Homeowner's Insurance Policies

Following a covered loss under a replacement cost policy, many states require the insurer to initially pay the actual cash value, and then provide the balance, or holdback, of the replacement cost once the insured has replaced or repaired the property. Under s. 627.7011, F.S., governing Florida homeowners' insurance policies, the treatment of holdbacks varies depending on whether the loss is to personal property or dwelling, and then whether the loss is total.

For personal property under a homeowners' insurance policy with replacement cost, the insurer must offer coverage whereby the insurer pays replacement cost without any holdback, whether or not the insured replaces the property. The insurer may also offer coverage in exchange for a premium credit or discount whereby the insurer initially pays the actual cost value of the insured loss, and then makes subsequent payments to the insured as receipts are received up to the policy limits for replacement costs.[75]

For a dwelling under a homeowners' insurance policy with replacement, the insurer must initially pay at least the actual cash value of the insured loss, less any deductible. Any remaining amount necessary to perform repairs is paid by the insurer as work is performed and expenses are incurred. However, if the dwelling suffered a total loss, the insurer must pay the replacement cost without any holdback.[76]

Time Limits for Filing Claims and Statute of Limitations

Section 627.70132, F.S., currently requires insureds to notify an insurer of a windstorm or hurricane claim, supplemental claim, or reopened claim within 3 years after the hurricane first made landfall or the windstorm caused the covered damage. Section 627.706(5), F.S., currently requires insureds to notify an insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have known about the loss.

For other types of property insurance claims, Florida law currently places a 5-year statute of limitations for bringing an action for the breach of a property insurance contract that runs from the date of the loss.[77]

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[78] 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.

[75] Section 627.7011(3)(b), F.S.
[76] Section 627.7011(3)(a), F.S.
[77] Section 95.11(2)(e), F.S
[78] 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.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,[79] which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.[80] Rather, surplus lines insurers are "unauthorized" insurers,[81] but may transact surplus lines insurance if they are made "eligible" by the OIR. To be made eligible to transact insurance, a surplus lines insurer must meet the following requirements related to regulatory oversight in other jurisdictions and solvency:[82]

- The surplus lines insurer is authorized in the state or county of its domicile as to the kind or kinds of insurance proposed to be placed with the insurer.
  - The insurer must have been an authorized insurer for at least the 3 preceding years. The OIR may waive the 3-year requirement if the insurer provides a product or service not readily available to Florida consumers or has operated successfully for a period of at least 1 year and has capital and surplus of not less than $25 million.
- The surplus lines insurer or an agent requesting to export a policy to the surplus lines insurer must provide the OIR with a duly authenticated copy of the surplus lines insurer's current annual financial statement, and also must provide any additional information regarding the insurer that the OIR requests.
- The surplus lines insurer must maintain a surplus as to policyholders of at least $15 million.
  - Alien surplus lines insurers (insurers formed under laws other than those of Florida or any state, district, territory, or commonwealth of the United States) must also maintain in the United States a trust fund for the protection of policyholders deemed adequate by the OIR of at least $5.4 million.
  - A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, F.S., and must be in compliance with ch. 625, F.S.
- The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.
- The officers and directors of the insurer must be competent and trustworthy, meeting the requirements of s. 624.404(3), F.S.

Policies issued by an impaired or insolvent surplus lines insurer are not covered by any of Florida's guaranty associations.

Placement of Insurance With an Eligible Surplus Lines Insurer

"To export" a policy means an insurance agent,[83] with the consent of the insurance applicant, placing a policy with an unauthorized insurer under the Surplus Lines Law through a surplus lines agent.[84] Unless an exception applies, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.[85] "Diligent effort" means seeking and coverage being rejected

[79] Section 624.01, F.S., provides that the Florida Insurance Code is chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[80] Section 624.09(1), F.S.
[81] Section 624.09(2), F.S.
[82] Section 626.918, F.S.
[83] Typically, the applicant's usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent.
[84] Section 626.914(3), F.S.
[85] Section 626.916(1)(a), F.S.

from at least three authorized insurers in the admitted market; however, if the cost to replace a residential dwelling is $700,000 or more, then only one coverage rejection is needed prior to export. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.[86] The law further specifies that:[87]

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,[88] the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

All licensed surplus lines agents are members of the Florida Surplus Lines Service Office (FSLSO), a nonprofit association created by statute and directed by a board of governors.[89] The FSLSO receives, records, and reviews all surplus lines insurance policies and documents, maintains records of such policies, produces monthly reports to the OIR, collects from surplus lines agents the surplus lines premium tax[90] and surplus lines service fee,[91] and other specified duties.[92] Each surplus lines agent that transacts business during a calendar quarter must file an affidavit stating that all surplus lines insurance the agent transacted during that quarter has been submitted to the FSLSO.[93] The affidavit must also include the diligent efforts the agent made to place coverages with authorized insurers.

Notice of Claims and Litigations Under Assignment Agreements

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.[94]

The Legislature in 2019 enacted s. 627.7152, F.S., which governs the execution of assignment of post-loss benefits under a property insurance policy, provides duties that assignees must meet

[86] Section 626.914(4), F.S.
[87] Section 626.916(1), F.S.
[88] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
[89] Section 626.921, F.S.
[90] *See* Section 626.932, F.S.
[91] *See* Section 626.9325, F.S.
[92] Section 626.921(3), F.S.
[93] Section 626.931, F.S.
[94] *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So.2d 55, 57 (Fla. 2000)(“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

when filing a claim under a property insurance policy, provides requirements pursuant to litigation brought by assignees under property insurance policies, and revises the standards for awarding attorney fees in such litigation.

Prior to litigation, under s. 627.7152(9), F.S., an assignee must provide the named insured and the assignor a written notice of intent to initiate litigation, delivered at least 10 business days before filing suit, but not before the insurer has made a determination of coverage. The notice must also include a detailed written invoice or estimate of services that includes itemized information and proof work was performed in accordance with accepted industry standards.

In a claim arising under an assignment agreement, the assignee has the burden under s. 627.7152(3)(b), F.S., to demonstrate that the insurer is not prejudiced by the assignee's failure to cooperate with the insurer in the claim investigation.

Notice of Limited Coverage for Antique Vehicles

Some insurers[95] will not offer mandatory personal injury protection[96] and property damage liability[97] coverages for antique vehicles,[98] in which case Florida law requires the automobile policy to provide notice to the policyholder of the limited coverage and its noncompliance with any financial responsibility law.[99] Such notice must be stamped or printed in contrasting color from the color used on the policy and placed on the policy declaration page and on the back of the policy.[100]

Agent Licensing

General Lines Agent

A general lines agent[101] is one who sells the following lines of insurance: property,[102] casualty,[103] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[104] or a workers' compensation self-insurance fund;[105] surety;[106] health;[107] and marine.[108] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance.[109] If the general lines

---

95 https://www.statefarm.com/insurance/auto/antique-classic-cars (last visited March 24, 2021).
96 Section 627.733, F.S.
97 Section 324.022, F.S.
98 *See* section 320.086, F,S.
99 Section 627.7276(1), F.S.
100 Section 627.7276(2), F.S.
101 Section 626.015(7), F.S.
102 Section 624.604, F.S.
103 Section 624.605, F.S.
104 As defined in s. 624.462, F.S.
105 Pursuant to s. 624.4621, F.S.
106 Section 626.606, F.S.
107 Section 624.603, F.S.
108 Section 624.607, F.S.
109 Section 626.827, F.S.

agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[110]

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.[111]

Motor Vehicle Servicing Agreements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.[112] Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.[113] Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.[114]

Home Warranty Contracts

A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.[115] No person shall solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.[116]

Service Warranty Contracts

A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[117] A person or entity

[110] Section 626.829, F.S.
[111] Section 626.015(17), F.S.
[112] Section 634.011(8), F.S.
[113] Section 634.031, F.S.
[114] Section 634.171, F.S.
[115] Section 634.301, F.S.
[116] Section 634.317, F.S. "sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. Section 634.301(12), F.S.
[117] Section 634.401(13), F.S.

may not solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless the person or entity is licensed and appointed as a sales representative.[118]

III. Effect of Proposed Changes:

Collateral Protection Insurance

Section 1 amends s. 215.555, F.S., to require that the FHCF provide reimbursement for a loss under collateral protection insurance if the coverage is in an amount equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy, equal to the coverage amount that the homeowner has been notified of, or equal to the coverage amount that the homeowner requests from the collateral protection insurer.

This section is effective June 1, 2021.

Service of Process

Section 2 amends s. 624.423, F.S., to provide that service of process is considered valid and binding on the insurer at the time the process documents are received by, rather than sent to, the insurer. Additionally, the section incorporates the secured network process provided for under s. 624.307(9), F.S., by providing that process is valid and binding upon being made available on the system.

This section is effective upon becoming law.

Electronic Meetings of Self-Insured Public Entities

Section 3 creates s. 624.46227, F.S., to authorize associations, trusts, and pools formed to provide self-insurance for public entities to establish a quorum and conduct public business through electronic or virtual means.

Customer Representatives

Section 4 amends s. 626.7351, F.S., to provide that the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates, LLC is an acceptable qualification for the purpose of customer representative licensure.

Company Employee Adjusters

Section 5 amends s. 626.856, F.S., revising the definition of a "company employee adjuster" in the Insurance Adjusters Law, to provide that an all-lines adjuster who is appointed and employed by an insurer's affiliate may serve as a company employee adjuster for the purpose of

---

[118] Section 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. Section 634.401(12), F.S.

ascertaining and determining the amount of an insurance claim, loss, or damage, or settling such claim, loss or damage.

Loss Run Statements

Section 6 amends s. 626.9202, F.S., to provide several provisions governing loss run statement requirements for nonadmitted insurers:

- Reports from group health insurers must also include premiums paid, number of insured on a monthly basis, and dependent status;
- Each insurer must designate an individual or entity to receive written requests for loss run statements from insureds;
- The personal lines insurer must provide the insured a loss run statement within 15 days after receiving the insured's written request subsequent to the insured providing the insurer with information on obtaining a loss run statement from a consumer reporting agency;
- A loss run statement must contain a claims history with the insurer for the preceding 3 years, not 5 years, or if the claims history is less than 3 years, not 5 years, a complete claims history with the insurer;
- Life insurers are exempted from this section;
- Under a group health insurance policy, only the group policyholder may request and be provided a loss run statement.

This section is effective upon becoming law.

Section 12 amends s. 627.444, F.S., to provide several provisions governing loss run statement requirements for admitted insurers:

- Reports from group health insurers must also include premiums paid, number of insured on a monthly basis, and dependent status;
- Each insurer must designate an individual or entity to receive written requests for loss run statements from insureds;
- The personal lines insurer must provide the insured a loss run statement within 15 days after receiving the insured's written request subsequent to the insured providing the insurer with information on obtaining a loss run statement from a consumer reporting agency.
- A loss run statement must contain a claims history with the insurer for the preceding 3 years, not 5 years, or if the claims history is less than 3 years, not 5 years, a complete claims history with the insurer.
- Life insurers are exempted from this section;
- Under a group health insurance policy, only the group policyholder may request and be provided a loss run statement.

This section is effective upon becoming law.

Florida's Rating Law

Hurricane Model Averaging and Weighting

Section7 amends s. 627.062, F.S., to provide that a residential property insurer's rate filing may estimate projected hurricane losses by using a weighted or straight average of two or more methods or models approved by the Commission on Hurricane Loss Projection Methodology.

Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials

Section 8 amends. s. 627.0629, F.S., to provide residential property insurers with discretion regarding whether to include positive and negative rate factors based on building code enforcement in rate filings for residential property insurance.

The bill further provides that residential property insurers may file premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization, if such standards meet statutory requirements.

The bill allows property insurers to require policyholders who are constructing or retrofitting a structure to provide evidence of compliance with windstorm mitigation standards prior to receiving premium discounts, credits, or rate reductions allowed under the rating plan.

Workers' Compensation Reporting Requirements and Rating Factors

Section 9 amends s. 627.072, F.S., to provide factors used in the determination and fixing of workers' compensation rates must include past loss experience and prospective loss experience for insolvent insurers. The prior reported data for such insurers and other relevant information may be used to assess the impact on rates.

Citizens Eligibility for Commercial Residential Wind-Only Coverage

Section 10 amends s. 627.351, F.S., governing Citizens, to provide that condominium associations where 50 percent or more of the condominium units are rented more than eight times per year for a period of less than 30 days may be eligible for wind-only Citizens policies.

Delivery of Policies and Claims Communications

Section 11 amends s. 627.421, F.S., to allow insurers to electronically transmit all policy documents and claims communications to the insured or policyholder when the policy is sold in a wholly electronic manner, provided the insurer provides the insured or policyholder with a disclosure at the time of sale.

Homeowners' Insurance Policies

Section 14 amends s. 627.7011, F.S., governing law and ordinance coverage and replacement cost holdbacks for dwellings and personal property under a homeowners' insurance policy. The bill provides that the applicable laws and ordinances for purposes of determining law and ordinance coverage are those enacted on or before the date of the loss.

Diligent Effort Requirements Under Flood Insurance Policies

Section 15 amends s. 627.715, F.S., to provide that an agent may export a flood insurance policy or endorsement to an eligible surplus lines insurer without first making a diligent effort to seek coverage from three or more authorized insurers.

This section is effective upon becoming law.

Notice of Claims Under Assignment Agreements

Section 16 amends s. 627.7152, F.S., governing residential property insurance and commercial property insurance assignment agreements. The bill adds the services of inspection and providing a scope of service to the list of services contemplated by the definition of "assignment agreement." The bill excludes public adjuster fees from the definition of "assignment agreement." The bill further provides the insurer may designate a name, mailing address, and email address to receive a notice to initiate litigation from an assignee.

This section is effective upon becoming law.

Notice of Limited Coverage for Antique Vehicles

Section 17 amends s. 627.7276, F.S., to require that an automobile policy that does not provide coverage for bodily injury liability and property damage liability include notice accompanying the declarations page that the policy does not provide such coverages and does not comply with any financial responsibility laws. Such policies generally cover antique motor vehicles.

Agent Licensing

Motor Vehicle Service Agreements

Section 18 amends s. 634.171, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell motor vehicle service agreements.

Home Warranty Contracts

Section 19 amends s. 634.317, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell home warranty contracts.

Service Warranty Contracts

Section 20 amends s. 634.419, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell service warranty contracts.

Conforming Change

Section 13 repeals s. 627.6647, F.S., pertaining to the release of claims experience, to provide conforming changes necessitated by **Section 6**, s. 626.9202, F.S. and **Section 12**, s. 627.444, F.S., pertaining to loss run statements for all lines of insurance.

Reenactment

Section 21 reenacts s. 627.7153, F.S., which addresses policies restricting assignments of post-loss benefits under a property insurance policy, to incorporate amendments made to s. 627.7152, F.S., which addresses assignment agreements.

Effective Date

Section 22 provides that except as otherwise expressly provided in this act, and except for this section, which takes effect upon this act become law, this act is effective July 1, 2021.

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: 215.555, 624.423, 624.46227, 626.7351, 626.856, 626.9202, 627.062, 627.0629, 627.072, 627.351, 627.421, 627.444, 627.7011, 627.715, 627.7152, 627.7276, 634.171, 634.317, and 634.419.

This bill creates the following sections of the Florida Statutes: 624.46227.

This bill repeals section 627.6647 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 Banking and Insurance on March 10, 2021:
The committee substitute:

- Authorizes associations, trusts, and pools formed to provide self-insurance for public entities to establish quorum and conduct public business through electronic or virtual means.
- Identifies the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates, LLC is an acceptable qualification for the purpose of customer representative licensure.
- Allows for paperless communication by an insurer when the policy is sold in an exclusively electronic manner and the insurer provides a disclosure to the policyholder at the time of sale.
- Requires a notice that an antique motor vehicle insurance policy does not provide BI and PD coverages, and for placement of such notice in the policy's declarations page.
- Excludes public adjuster fees from the definition of "assignment agreement."
- Makes additional technical and clarifying changes to the underlying bill.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Perry

A bill to be entitled

An act relating to insurance; amending s. 215.555, F.S.; redefining the term “covered policy” under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; amending s. 624.423, F.S.; specifying when service of process is valid and binding upon insurers; creating s. 624.46227, F.S.; authorizing any association, trust, or pool created for the purpose of forming or managing a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communication media technology; amending s. 626.7351, F.S.; revising a qualification for licensure as a customer representative; amending s. 626.856, F.S.; revising the definition of the term “company employee adjuster”; amending s. 626.9202, F.S.; revising the definition of the term “loss run statement”; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required claims history in loss run statements; providing applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; amending s. 627.062, F.S.; revising the factors for determining whether an insurance rate filing is excessive, inadequate, or unfairly discriminatory; amending s. 627.0629, F.S.; authorizing, rather than

requiring, rate filings for certain residential property insurance to include certain rate factors; authorizing insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards; authorizing insurers to require policyholders to provide evidence of compliance with mitigation standards under certain conditions; amending s. 627.072, F.S.; providing a ratemaking factor for workers’ compensation and employer’s liability insurance; amending s. 627.351, F.S.; revising conditions for determining the ineligibility of condominiums for wind-only coverage; amending s. 627.421, F.S.; authorizing insurers to electronically transmit policy documents and claims documents under certain circumstances; amending s. 627.444, F.S.; revising the definition of the term “loss run statement”; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required claims history in loss run statements; providing applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; repealing s. 627.6647, F.S., relating to the release of information required for bid to group health insurance policyholders; amending s. 627.7011, F.S.; revising conditions for inclusion of costs for law and ordinance coverage in loss adjustments under certain homeowners' policies; amending s. 627.715, F.S.; providing an exemption from a diligent effort requirement for agents exporting contracts or endorsements providing flood coverage; amending s. 627.7152, F.S.; revising the definition of the term "assignment agreement"; specifying the addresses to which a notice of intent must be served; amending s. 627.7276, F.S.; revising notice requirements for motor vehicle policies that do not provide coverage for bodily injury and property damage liability; amending ss. 634.171, 634.317, and 634.419, F.S.; authorizing licensed personal lines or general lines agents to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and service warranties, respectively, without a sales representative license; reenacting s. 627.7153(1) and (2)(d), F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy, to incorporate the amendment made by the act to s. 627.7152, F.S., in references thereto; providing effective dates.

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

Section 1. Effective June 1, 2021, paragraph (c) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

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

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, tenant, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any joint underwriting association or similar entity created under law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy, the coverage amount that the homeowner has been notified of, or the coverage amount the homeowner requests from the collateral protection insurer, if such collateral protection insurance policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created under s. 627.351(6), or from the Florida Windstorm Underwriting Association, created under s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property

Insurance Corporation must be approved by the Office of Insurance Regulation before the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking shall be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

Section 2. Effective upon this act becoming a law, subsection (3) of section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(3) Service of process is valid and binding upon the insurer on the date process served upon the Chief Financial Officer is delivered to the insurer ~~and sent~~ or the insurer has been notified such information has been made available on a secured network in accordance with this section and s. 624.307(9) ~~shall for all purposes constitute valid and binding service thereof upon the insurer~~.

Section 3. Section 624.46227, Florida Statutes, is created to read:

624.46227 Meeting requirements.—Any association, trust, or pool authorized by state law and created for the purpose of forming a risk management mechanism or providing self-insurance for public entities in this state may establish a quorum and conduct public business through communication media technology.

Section 4. Subsection (3) of section 626.7351, Florida Statutes, is amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(3) Within 4 years preceding the date that the application for license was filed with the department, the applicant has earned the designation of Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer Service Representative (ACSR) from the Insurance Institute of America; the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors; the designation of Certified Professional Service Representative (CPSR) from the National Foundation for CPSR; the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives; the designation of Certified Insurance Representative (CIR) from All-Lines Training; the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC; the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute; the designation of Registered Customer Service Representative

(RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or a degree from an accredited institution of higher learning approved by the department when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance. The department shall adopt rules establishing standards for the approval of curriculum.

Section 5. Section 626.856, Florida Statutes, is amended to read:

626.856 “Company employee adjuster” defined.—A “company employee adjuster” means a person licensed as an all-lines adjuster who is appointed and employed on an insurer’s staff of adjusters, by an affiliate, or by a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 6. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 626.9202, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

626.9202 Loss run statements for all lines of insurance.—

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

(a) “Loss run statement” means a report that contains the policy number, the period of coverage, the number of claims, the

paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds’ statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains premiums paid, number of insureds on a monthly basis, and dependent status.

(b) “Provide” means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an individual or entity designated by the insurer receives ~~receipt of~~ the insured’s written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the insurer must then provide such loss run statement within 15 calendar days after the individual or entity designated by the insurer receives the insured’s subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as

defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 7. Paragraph (b) 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:

(b) Upon receiving a rate filing, the office shall review the filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer’s investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers calculate investment income attributable to classes of insurance written in this state and the manner in which investment income is used to calculate insurance rates. Such manner must contemplate allowances for an underwriting profit

factor and full consideration of investment income that produces a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to policyholders, members, or subscribers in this state.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may not disapprove a rate as excessive solely due to the insurer having obtained catastrophic reinsurance to cover the insurer’s estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628. A residential property insurance rate filing may use a weighted or straight average of two or more such models or methods.

12. Projected flood losses for personal residential property insurance, if applicable, which may be estimated using a model or method, or a straight average of model results or output ranges, independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology and as further provided in s. 627.0628.

13. A reasonable margin for underwriting profit and

contingencies.

14. The cost of medical services, if applicable.

15. Other relevant factors that affect the frequency or severity of claims or expenses.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 8. Paragraph (b) of subsection (2) of section 627.0629, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

627.0629 Residential property insurance; rate filings.—

(2)

(b) A rate filing for residential property insurance made more than 150 days after approval by the office of a building code rating factor plan submitted by a statewide rating organization may ~~shall~~ include positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage. The rate filing must ~~shall~~ include variations from standard rate factors on an individual basis based on inspection of a particular structure by a licensed home inspector. If an inspection is requested by the insured, the insurer may require the insured to pay the reasonable cost of the inspection. This paragraph applies to structures constructed or renovated after the implementation of this paragraph.

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate

Florida Senate - 2021 CS for SB 742

597-02692-21 2021742c1

differentials based on windstorm mitigation construction standards developed by an independent, not-for-profit, scientific research organization, if such standards meet the requirements of this section. The insurer may require a policyholder who elects to construct or retrofit the structure, in whole or in part, for windstorm mitigation purposes to present to the insurer evidence of compliance with the mitigation standards before receiving any premium discount, credit, or rate reduction allowed under the rating plan.

Section 9. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability insurance, the following factors shall be used in the determination and fixing of rates:

(a) The past loss experience and prospective loss experience within and outside this state;

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

(c) ~~(b)~~ The conflagration and catastrophe hazards;

(d) ~~(c)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and

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

loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 10. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(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.

The requirements of 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 may ~~shall~~ be deemed ineligible for coverage when ~~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.

Section 11. Subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) If a policy is sold in a wholly electronic manner, the insurer may electronically transmit all policy documents and claims communications to the insured or policyholder so long as the insurer provides a disclosure to the insured or policyholder at the time of sale.

Section 12. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 627.444, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

627.444 Loss run statements for all lines of insurance.—

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

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains premiums paid, number of insureds on a monthly basis, and dependent status.

(b) "Provide" means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an individual or entity designated by the insurer receives ~~receipt of~~ the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the insurer must then provide such loss run statement within 15 calendar days after the individual or entity designated by the insurer receives the insured's subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 13. Section 627.6647, Florida Statutes, is repealed.

Section 14. Paragraph (b) of subsection (1) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(1) Prior to issuing a homeowner's insurance policy, the insurer must offer each of the following:

(b) A policy or endorsement providing that, subject to other policy provisions, any loss that is repaired or replaced at any location will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits, rather than actual cash value, and also including costs necessary to meet applicable laws and ordinances enacted on or before the time of loss which regulate ~~regulating~~ the construction, use, or repair of any property or require ~~requiring~~ the tearing down of any property, including the costs of removing debris. However, additional costs necessary to meet applicable laws and ordinances may be limited to 25 percent or 50 percent of the dwelling limit, as selected by the policyholder, and such coverage applies only to repairs of the damaged portion of the structure unless the total damage to the structure exceeds 50 percent of the replacement cost of the structure.

An insurer is not required to make the offers required by this subsection with respect to the issuance or renewal of a homeowner's policy that contains the provisions specified in paragraph (b) for law and ordinance coverage limited to 25 percent of the dwelling limit, except that the insurer must offer the law and ordinance coverage limited to 50 percent of the dwelling limit. This subsection does not prohibit the offer of a guaranteed replacement cost policy.

Section 15. Effective upon this act becoming a law, present subsections (4) through (10) of section 627.715, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 16. Effective upon this act becoming a law, paragraph (b) of subsection (1) and paragraph (a) of subsection (9) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, scopes of service, to inspect, protect, repair, restore, or replace property or to mitigate against further damage to the property. The term does

not include fees collected by a public adjuster as defined in 626.854.

(9)(a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, to the name and mailing address designated by the insurer in the policy forms, or by electronic delivery at the e-mail address designated by the insurer in the policy forms at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

Section 17. Section 627.7276, Florida Statutes, is amended to read:

627.7276 Notice of limited coverage.—

(1) An automobile policy that does not contain coverage for bodily injury and property damage must include a notice ~~be clearly stamped or printed to the effect~~ that such coverage is not included in the policy in the following manner:

"THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW."

(2) This notice ~~legend~~ must accompany ~~appear on~~ the policy declaration page and ~~on the filing back of the policy and~~ be ~~printed~~ in a ~~contrasting color from that used on the policy and in~~ type and ~~larger than the largest type used in the~~ text at least as large as the type and text used on the declarations page ~~thereof, as an overprint or by a rubber stamp impression~~.

Section 18. Section 634.171, Florida Statutes, is amended to read:

634.171 Salesperson to be licensed and appointed; exemptions.—Salespersons for motor vehicle service agreement companies and insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general. However, they shall be exempt from all other provisions of chapter 626 including fingerprinting, photo identification, education, and examination provisions. License, appointment, and other fees shall be those prescribed in s. 624.501. A licensed and appointed salesperson shall be directly responsible and accountable for all acts of her or his employees and other representatives. Each service agreement company or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. An ~~No~~ employee or salesperson of a motor

vehicle service agreement company or insurer may not directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent, unless so qualified, licensed, and appointed therefor under the Florida Insurance Code. A licensed personal lines or general lines agent is not required to be licensed as a salesperson under this section to solicit, negotiate, advertise, or sell motor vehicle service agreements. A motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 19. Section 634.317, Florida Statutes, is amended to read:

634.317 License and appointment required; exemptions.—A ~~No~~ person may not solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative. A licensed and appointed sales representative shall be directly responsible and accountable for all acts of the licensee's employees. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell home warranty contracts.

Section 20. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required; exemptions.—A ~~No~~ person or entity may not ~~shall~~ solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part is ~~shall~~ not ~~be~~ required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell service warranties.

Section 21. Effective upon this act becoming a law, for the purpose of incorporating the amendment made by this act to section 627.7152, Florida Statutes, in references thereto, subsection (1) and paragraph (d) of subsection (2) of section 627.7153, Florida Statutes, are reenacted to read:

627.7153 Policies restricting assignment of post-loss benefits under a property insurance policy.—

(1) As used in this section, the term “assignment agreement” has the same meaning as provided in s. 627.7152.

(2) An insurer may make available a policy that restricts in whole or in part an insured’s right to execute an assignment agreement only if all of the following conditions are met:

(d) Each restricted policy include on its face the following notice in 18-point uppercase and boldfaced type:

THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO

OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

Section 22. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #742**, relating to Insurance, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021
Meeting Date

SB 742
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Insurance

Name Timothy J. Meenan

Job Title Lobbyist

Address PO Box 11247
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 8504254000

Email tim@meenanlawfirm.com

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021
Meeting Date

SB 742
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Insurance

Name Reginald R. Garcia

Job Title Attorney

Address PO Box 11069
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 850-933-7150

Email reggiegarcialaw@icloud.com

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

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

SB 742
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Insurance

Name Greg Black

Job Title Lobbyist

Address PO Box 838
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 8505098022

Email Greg@WaypointStrat.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing R Street Institute

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021
Meeting Date

CS/SB742
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Insurance

Name Scott Matiyow (MAT-E-O)

Job Title Vice President Legislative and Regulatory Affairs

Address 215 South Monroe Street, Suite 835
Street

Phone (850) 597-7425 Ext. 21

Tallahassee — Florida — 32301
City — State — Zip

Email scott.matiyow@piff.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Personal Insurance Federation 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

APPEARANCE RECORD

3/29/21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) CS/SB742

Meeting Date — Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: INS Redefine "Covered Policy"

Name: David Serdar

Job Title:

Address: 66 Wintergreen Dr — Street

Fruitland Park Fl 34731 — City, State, Zip

Phone: 3528056597

Email: golfendave1955@gmail.com

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

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

Representing: Self Statesman/Victem of Policy INS-Wording

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/21
Meeting Date

742
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Insurance

Name Christine M. Ashburn

Job Title Chief - Comms & Legislative Affairs

Address 2101 Maryland Circle
Street

Tallahassee FL 32303
City State Zip

Phone 850-513-3746

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Citizens Property Insurance Corp

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 Judiciary

BILL: SB 826

INTRODUCER: Senators Baxley and Harrell

SUBJECT: Child Protection Teams

DATE: March 26, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Favorable**
2.	Ravelo	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 826 extends sovereign immunity protections to any member of a child protection team when the team member is carrying out her or his duties under the control, direction, and supervision of the state or any of its agencies or subdivisions.

A child protection team is a group of professionals who receive referrals, primarily from child protective investigators and sheriff's offices, when child abuse, abandonment, or neglect is alleged. The team, directed by a physician, evaluates the allegations, assesses risks, and provides recommendations for child safety and support services.

The bill may have an indeterminate effect on state revenues and expenditures. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2021.

II. Present Situation:

Waiver of Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.[1] Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. Section 768.28(1), F.S., is a limited statutory waiver of the immunity conferred under article X, section 13 of the Florida Constitution. Section 768.28(1), F.S., allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of a government officer, employee, or agent acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct.[2] The waiver of sovereign

[1] Legal Information Institute, *Sovereign immunity*, *available at* https://www.law.cornell.edu/wex/sovereign_immunity (last visited March 8, 2021).

[2] Section 768.28(1), F.S.

immunity applies only to "injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment ...."[3]

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard from human rights, safety, or property.[4] A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment or for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.[5] A tortious claim that arises under the waiver of sovereign immunity must be brought against the relevant government entity or official in his or her capacity, unless it arises from conduct that is beyond negligent.[6]

An "officer, employee, or agent" protected by sovereign immunity includes, but is not limited to, certain volunteer health care providers, certain nonprofit independent colleges or universities located and chartered in this state which own or operate an accredited medical school; and a public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.[7]

Florida Appeal Courts have equated "bad faith" with the "actual malice standard."[8] "Malicious purpose," has been interpreted as meaning the conduct was committed with "ill will, hatred, spite, [or] an evil intent."[9] "Wanton and willful disregard of human rights [or] safety," has been described as "conduct much more reprehensible and unacceptable than mere intentional conduct," and "conduct that is worse than gross negligence."[10] These cases have not interpreted what "wanton and willful disregard of human rights [or] safety" *actually means* as used in s. 768.28(9)(a), F.S.[11] However, according to the Florida Standard Jury Instructions, "wanton" means "with a conscious and intentional indifference to consequences and with the knowledge that damage is likely to be done to persons or property" and "willful" means "intentionally, knowingly and purposely."[12]

---

[3] *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).
[4] Section 768.28(9)(a), F.S.
[5] *Id*.
[6] *Id.*
[7] Section 768.28(9)(b)2., F.S.
[8] *Peterson v. Pollack*, 290 So. 3d 102, 109(Fla. 4th DCA 2020) (quoting *Parker v. State of Fla. Bd. of Regents ex rel. Fla. State Univ.*, 724 So. 2d 163, 167 (Fla. 1st DCA 1998) (citation omitted)).
[9] *Id*. (quoting *Eiras v. Florida*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017)).
[10] *Id*. (quoting *Richardson v. City of Pompano Beach*, 511 So. 2d 1121, 1123 (Fla. 4th DCA 1987); *Sierra v. Associated Marine Insts., Inc.*, 850 So. 2d 582, 593 (Fla. 2d DCA 2003)).
[11] *Id*.
[12] *Id*. (citing Fla. Std. Jury Instr. (Crim.) 7.9 (Vehicular or Vessel Homicide); Fla. Std. Jury Instr. (Crim.) 28.5 (Reckless Driving); Fla. Std. Jury Instr. (Crim.) 28.19 (Reckless Operation of a Vessel).

Damages

Section 768.28(5), F.S., caps tort recovery from a governmental entity at $200,000 per person and $300,000 per accident. The caps in s. 768.28(5), F.S., apply to all of the elements of the monetary award to a plaintiff against an entity protected by sovereign immunity.[13] In other words, a plaintiff's entire recovery, including damages, back pay, attorney fees, and any other costs, are limited by the caps in s. 768.28, F.S. The limited waiver of immunity does not apply to punitive damages or interest for the period before judgment.[14] Additionally, an attorney may not charge in excess of 25 percent of any judgment or settlement.[15]

Claim Bills

Although an 'excess' judgment may be entered, the statutory caps make it impossible, absent a special claim bill passed by the Legislature or insurance coverage, for a claimant to collect more than the caps discussed above.[16] A claim bill, also known as a relief act, is a bill that compensates a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.[17] It is not an action at law, but rather is a legislative measure that directs a relevant government entity or officer to pay a specific sum of money to a claimant to satisfy an obligation.[18] The Legislature may pass a claim bill[19] and does so based on a principle of fair treatment to compensate a person who is injured or damaged without compensation.[20]

Once a legislative claim bill is formally introduced, a special master conducts a quasi-judicial hearing.[21] This hearing may be conducted in a manner similar to a trial during which the claimant may offer testimony or other evidence relevant to establish the claim.[22] A responding agency may present a defense to contest the claim, and the special master must then prepare a report with an advisory recommendation to the Legislature.[23]

Child Protection Teams

Description

The Florida Department of Health (DOH) currently contracts with 22 independent, community-based organizations that serve as child protection teams.[24] "Child Protective Team" (CPT) means a team of professionals established by the DOH to receive referrals from the protective

---

[13] *Gallagher v. Manatee Cty*. 927 So. 2d 914, 918 (Fla. 2d DCA 2006).
[14] Section 768.28(5), F.S.
[15] Section 768.28(8), F.S.
[16] Section 768.28(5), F.S. *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).
[17] The Florida Senate, The Florida House of Representatives Civil Justice Subcommittee, *Legislative Claim Bill Manual, Policies, Procedures, and Information Concerning Introduction and Passage*, p. 2 (August 2019), *available at* https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf (last visited March 8, 2021).
[18] *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007)
[19] *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).
[20] *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).
[21] *Wagner*, 960 So. 2d at 788-789 (citing Kahn, at 26).
[22] *Id.*
[23] *Id.*
[24] The DOH, *Senate Bill 826 Agency Analysis*, p. 2 (March 2, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOH Analysis").

investigators and protective supervision staff of the Department of Children and Families (DCF) and to provide specialized and supportive services to the program in processing child abuse,[25] abandonment,[26] or neglect case.[27, 28] The teams perform medical evaluations, assess risks, and provide recommendations for child safety and support services.[29]

Composition and Responsibilities

The CPT is one of six programs that make up the Division of Children's Medical Services (CMS) of the DOH. The CPTs, within the CMS, have 22 district offices.[30] Each office must be available 24 hours per day, every day, to provide immediate medical diagnosis and evaluation, for consultations by phone, or for other assessment services.[31]

Services

When a CPT accepts a referral from the DCF or law enforcement agency, the team must be able to provide, in part, the following services:
- Medical diagnosis and evaluation services;
- Nursing assessments;
- Child and family social assessments;
- Multidisciplinary case staffings;
- Psychological and psychiatric diagnosis and evaluations;
- Specialized and forensic interviews; and
- Expert medical, psychological, and related professional testimony in court cases.[32]

---

[25] Section 39.01(2), F.S., defines "abuse" as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired.

[26] Section 39.01(1), F.S., defines "abandoned" or "abandonment" as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. "Establish or maintain a substantial and positive relationship" means, in part, frequent and regular contact with the child, and the exercise of parental rights and responsibilities.

[27] Section 39.01(50), F.S., states "neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

[28] Section 39.01(13), F.S.

[29] The DCF, *CFOP 170-5*, Chapter 9, p. 1, *available at* https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-05%20%20Child%20Protective%20Investigations/CFOP%20170-05,%20%20Chapter%2009,%20Coordination%20with%20Child%20Protection%20Team.pdf (last visited March 8, 2021).

[30] The DOH, *Children's Medical Services Child Protection Teams* (2020), *available at* http://www.cms-kids.com/home/contact/cpt.pdf (last visited March 8, 2021) (hereinafter cited as "CMS CPT").

[31] The DOH, Children's Medical Services, *Child Protection Team Program Handbook*, p. 4 (June 28, 2019), *available at* http://www.cms-kids.com/providers/prevention/documents/handbook_cpt.pdf (last visited March 8, 2021) (hereinafter cited as "CPT Handbook").

[32] Section 39.303(3), F.S. Further, a CPT that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child is required to consult with a physician who has experience in treating children with the same condition.

Cases that must be referred to a Child Protection Team

The following cases involving child abuse, abandonment, or neglect that are reported to the Central Abuse Hotline must be referred to a child protection team:

- Head injuries, bruises to the head or neck, burns, or fractures in a child, regardless of age.
- Bruises that appear anywhere on a child who is 5 years of age or younger.
- Alleged child sexual abuse.
- A sexually transmitted disease that occurs in a prepubescent child.
- Reported malnutrition or failure to thrive.
- Medical neglect.
- Instances of a child or sibling remaining in a home where a child has been pronounced dead on arrival at a hospital or a child has been injured and then died due to suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional issues occurring in a child.[33]

Employees and Sovereign Immunity

The teams operate under the oversight of a medical director who is a board-certified pediatrician with special training in child abuse and neglect.[34] According to the DOH, Florida's CPTs have approximately 364 team members, excluding medical directors, who are employed by private, non-profit entities.[35] Each team includes a medical director, other physicians, advanced practice registered nurses, physician assistants, registered nurses, team coordinators, case coordinators, and support staff.[36] State universities and county governmental entities employ approximately 126 of the team members.[37] The remaining members, approximately 238 members, are independent contractors who are not employees or agents of the DOH, and are therefore personally liable for their actions.[38]

Lawsuits Filed Against Child Protection Teams

The DOH Legal Counsel in collaboration with the Department of Financial Services, Division of Risk Management (DRM) represent state employees in tortious actions.[39] The DRM within the Chief Financial Officer's office queried its files for recent lawsuits involving CPTs. For Fiscal Years 2016-17, 2017-18, and data from 2018-February 2019, the DRM was not able to identify a lawsuit filed against a government employed CPT.[40] The DRM conducted an updated review of

---

[33] Section 39.303(4), F.S.
[34] CMS CPT and s. 39.303(2)(a), F.S.
[35] The DOH Analysis at p. 2.
[36] *Id.*
[37] *Id.*
[38] The DOH Analysis at p. 3.
[39] The DOH Analysis at p. 2.
[40] E-mail prepared by Meredith Brock Stanfield, Director of Legislative and Cabinet Affairs, and forwarded by Chase Mitchell, Office of Legislative Affairs, Office of the Chief Financial Officer (February 21, 2019) (on file with the Senate Committee on Children, Families, and Elder Affairs). Risk Management noted that it did not have a specific code in its system that identified CPTs that were involved in lawsuits. In updating a 2016 report, the workers queried all cases against DCF since July 1, 2012, and used cause codes such as child abuse, failure to protect, wrongful death by a foster parent, or similar category. The liability adjusters found no reported cases related to child protection teams in Fiscal Years 2016-2017. In Fiscal Years 2013-2014 through 2015-2016 notices were filed that litigation might ensue, but no lawsuits have been filed based upon those notices. The e-mail shows that earlier lawsuits were filed dating back to Fiscal Years 2013-2014 and 2015-2016, but it is not readily apparent the extent to which CPTs were named in the litigation.

approximately 42 claims against the DCF and the DOH related to child abuse, failure to protect wrongful death, etc., which have been filed since February 2019. No new claims which contain allegations of any wrongdoing against a CPT member have been identified.[41]

Sovereign Immunity and Child Protection Team Physicians

It is not definitively settled whether all CPT *physicians* are covered under sovereign immunity. Whether sovereign immunity applies depends on the degree of control that the state maintains over the agent. In *Stoll v. Noel*,[42] the Florida Supreme Court explained that, under the appropriate circumstances, independent contractor physicians may be agents of the state for purposes of sovereign immunity:

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.[43]

The *Stoll* Court examined the employment contract between the CMS physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did. The manuals and guides given to physician consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons. Furthermore, the Court's conclusion was supported by the state's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and the state acknowledged full financial responsibility for the physicians' actions. The Court noted that the state's interpretation of its manual is entitled to judicial deference and great weight.[44]

III. Effect of Proposed Changes:

The bill amends s. 768.28(9)(b), F.S., expanding the definition of "officer, employee, or agent" for the purpose of the purpose sovereign immunity to include:

> "[A]ny member of a child protection team, as defined in s. 39.01, when carrying out her or his duties as a team member under the control, direction, and supervision of the state or any of its agencies or subdivisions."

As a result, a member of a CPT will receive sovereign immunity protection in a tort action when the team member is determined to have acted under the control, direction, and supervision of the state or one of its entities. If the CPT member is found to be acting outside of that control, then sovereign immunity will not protect the team member in a tort lawsuit.

---

[41] E-mail prepared by Chase Mitchell, Office of Legislative Affairs, Office of the Chief Financial Officer, (March 5, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[42] *Stoll v. Noel*, 694 So. 2d 701 (Fla. 1997).
[43] *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).
[44] *Id*.

The bill applies sovereign immunity to a member of the CPT using a standard similar to current Supreme Court precedent. In *Stoll*,[45] the Supreme Court found that state-contracted physician consultants were agents of the state and entitled to sovereign immunity when the state authorized the physician's services in advance and maintained supervisory authority over the physician. A member of the CPT acting *outside* of his or her duties or without authority from the state or it's agencies, or subdivisions, would not be eligible for sovereign immunity under either the current *Stoll* standard or the bill.

The bill takes effect July 1, 2021.

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:

SB 826 may reduce the need for child protection teams to purchase liability insurance.

C. Government Sector Impact:

The DOH estimates that the fiscal impact of extending sovereign immunity coverage to approximately 238 additional CPT members cannot be determined but might be

[45] *See supra* note 42, and accompanying text.

significant. Potential costs to the department could include legal representation, the cost to settle a suit, and other litigation related expenses.[46]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28, 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.

[46] The DOH Analysis at p. 4.

By Senator Baxley

12-00719-21 2021826__

A bill to be entitled

An act relating to Child Protection Teams; amending s. 768.28, F.S.; revising the definition of the term “officer, employee, or agent” as it applies to immunity from personal liability in certain actions to include any member of a Child Protection Team established by the Department of Health in certain circumstances; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (9) of section 768.28, Florida Statutes, are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)(a) An ~~No~~ officer, employee, or agent of the state or of any of its subdivisions may not ~~shall~~ be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. The exclusive

remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers is ~~shall be~~ by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions are ~~shall~~ not ~~be~~ liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. “Employee” includes any volunteer firefighter.

2. “Officer, employee, or agent” includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); ~~and~~ any public defender or her or his employee or agent, including~~, among others,~~ an assistant public defender or ~~and~~ an investigator; and any member of a Child Protection Team, as defined in s. 39.01(13), when carrying out her or his duties as a team member under the control, direction, and supervision of the state or any of its agencies or subdivisions.

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

Section 2. This act shall take effect July 1, 2021.

SENATOR DENNIS BAXLEY
12th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

March 9, 2021

The Honorable Chair Jeff Brandes
414 Senate Office Building
Tallahassee, Florida 32399

Dear Chair Brandes,

I would like to request that SB 826 Child Protection Teams be heard in the next Judiciary Committee meeting.

These teams are medically directed, multidisciplinary teams that work with local sheriff's offices and the Department of Children and Families investigators in cases of suspected child abuse and neglect. There are 23 teams covering all of Florida.

This bill codifies the 1997 Florida Supreme Court decision in Stoll vs. Noel and provides that members of a Child Protection Team have sovereign immunity while carrying out their duties as a team member under the control, direction, and supervision of the state or any of its agencies or subdivisions.

Thank you for your favorable consideration.

Onward & Upward,

Senator Dennis K. Baxley
Senate District 12

DKB/dd

cc: Tom Cibula, Staff Director

REPLY TO:
☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: *www.flsenate.gov*

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21 3:30PM
Meeting Date

SB 0826
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic 826 - Child Protection Team

Name Douglas S. Bell

Job Title Attorney at Law & Senior Policy Advisor

Address 119 S. Monroe, Suite 200
Street

Phone 850-205-9000

TLH FL 32301
City *State* *Zip*

Email Doug.Bell@MHDFirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chapter of the American Academy of Pediatrics

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 Judiciary

BILL: CS/SB 1234

INTRODUCER: Judiciary Committee and Senator Boyd

SUBJECT: False Reports of Crimes

DATE: March 30, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Favorable**
2.	Ravelo	Justin	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1234 allows for an individual convicted of falsely reporting a crime to receive an enhanced financial penalty if the offense resulted in certain aggravated circumstances such as death or great bodily harm.

Currently, the criminal act of falsely reporting a crime is a misdemeanor in the first degree punishable by up to 1 year in county jail and a fine of up to $1,000. Under the bill, an offender may receive an *additional* fine of up to:

- $5,000 if the offense results in a response by a federal, state, district, municipal, or other "public safety agency" (a term defined in the bill) to address the reported crime, and the combined cost incurred by all responding agencies exceeds $1,000;
- $7,500 if the offense results in great bodily harm, permanent disfigurement, or permanent disability as a proximate result of lawful conduct arising out of a response; or
- $10,000 if the offense results in death as a proximate result of lawful conduct arising out of a response.

The bill takes effect upon becoming a law.

II. Present Situation:

Swatting

"'Swatting' is a form of harassment in which attackers try to trick law enforcement into sending heavily armed strike forces – like S.W.A.T.[1] As false reporting of crimes continues to grow in popularity, it unnecessarily places law enforcement and the public in harm's way."[2] "For some attackers, this is the thrill and the purpose of swatting: to cause the victims to fear for their lives as armed police charge into their homes, often with little warning. The police often believe that they themselves are facing an armed and dangerous adversary, producing a volatile scenario that can result in property destruction, injury, and death."[3]

False Reports Concerning the Commission of Any Crime

Section 817.49, F.S., provides that it is a first degree misdemeanor[4] to willfully impart, convey or cause to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, in that no such crime had actually been committed.

Examples of Other Statutes Involving False Information or False Reporting

Provided are examples of other statutes involving false information or false reporting:

- Section 39.205(9), F.S., provides that it is a third degree felony[5] to knowingly and willfully make a false report of child abuse, abandonment, or neglect, or advise another to make a false report.
- Section 365.172(14), F.S., provides, in part, that it is a first degree misdemeanor to use the 911 system for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency response of any public safety agency.[6]
- Section 401.41(3), F.S., provides that it is a second degree misdemeanor[7] to summon an emergency medical services[8] vehicle when the person knows or has reason to know the services of the vehicle are not needed.

---

[1] A "S.W.A.T." team is a special weapons and tactics team.

[2] Press Release, The Florida Senate, *Senator Boyd Files Legislation to Stop the False Reporting of Crimes* (Feb. 11, 2021), *available at* https://www.flsenate.gov/Media/PressReleases/show/3911 (last visited on March 3, 2021).

[3] Josh Fruhlinger, *What is swatting? Unleashing armed police against your enemies* (Nov. 25, 2020), CSO (IDG Communications, Inc.), *available at* https://www.csoonline.com/article/3573381/what-is-swatting-unleashing-armed-police-against-your-enemies.html (last visited on March 3, 2021).

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

[5] A third degree felony is punishable by up to 5 years in state prison and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.

[6] It is a third degree felony if the person has been convicted four times of the unauthorized use of the 911 system and continues to engage in such unauthorized use, or if the value of the service or service charge obtained in violation of s. 365.172(14), F.S., exceeds $100. Section 365.172(14), F.S.

[7] A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up $500. Sections 775.082 and 775.083, F.S. A second or subsequent violation is a first degree misdemeanor. Section 401.41(3), F.S.

[8] Emergency medical services do not appear to include law enforcement services. *See* s. 401.407(3), F.S. (defining "emergency medical services" in regard to emergency medical services grants).

- Section 790.163(1), F.S., provides that it is a second degree felony[9] 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.
- Section 790.164(1), F.S., provides that it is a second degree felony 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, concerning any act of arson or other violence to property owned by the state or any political subdivision, or concerning the use of firearms in a violent manner against a person or persons.
- Section 806.101, F.S., provides that it is a first degree misdemeanor[10] for a person, without reasonable cause, by outcry or the ringing of bells, or otherwise, to make or circulate, or cause to be made or circulated, a false alarm of fire.
- Section 837.05(1)(a), F.S., provides that it is a first degree misdemeanor[11] to knowingly give false information to a law enforcement officer concerning the alleged commission of any crime.[12]
- Section 837.05(2), F.S., provides that it a third degree felony to knowingly give false information to a law enforcement officer concerning the alleged commission of a capital felony.
- Section 837.055(1), F.S., provides that it is a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.
- Section 837.055(2), F.S., provides that it is third degree felony to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation, and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death.

III. Effect of Proposed Changes:

The bill amends s. 817.49, F.S., to provide for additional fines for the criminal offense of willfully making a false report of a crime to a law enforcement officer[13] in the following manner:

---

[9] A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.

[10] A second or subsequent conviction is a third degree felony. Section 806.101, F.S.

[11] A second or subsequent violation is a third degree felony if the information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by an audio recording or audio recording in a video of that information, a written or recorded statement made by the person who gave that information, or another person who was present when that person gave that information to the officer and heard that information; or the information the person gave to the law enforcement officer was communicated in writing. Section 837.05(1)(b), F.S.

[12] "Perhaps the only difference between the misdemeanor offenses described in section 837.05(1) and section 817.49 is that the latter would appear to permit a conviction for indirectly providing false information to a police officer, while the former might be interpreted as requiring the defendant to directly give the information to the officer." *Boland v. State*, 893 So.2d 683, 685 (Fla. 2d DCA 2005).

[13] The elements of the offense (with minor modifications in wording made by the bill) are willfully imparting, conveying, or causing to be imparted or conveyed to a law enforcement officer false information or reports concerning the alleged

- Up to $5,000 if the offense results in a response by a federal, state, district, municipal, or other "public safety agency" (a term defined in the bill) to address the reported crime, and the combined cost incurred by all responding agencies exceeds $1,000;
- Up to $7,500 if the offense results in great bodily harm, permanent disfigurement, or permanent disability as a proximate result of lawful conduct arising out of a response; or
- Up to $10,000 if the offense results in death as a proximate result of lawful conduct arising out of a response.

Under the bill, an offender may receive the above fine *in addition* to the current maximum sanction of imprisonment of up to 1 year in county jail and a fine of up to $1,000.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

commission of any crime under the laws of this state, knowing such information or report to be false, when no such crime has had actually been committed.

C. Government Sector Impact:

Indeterminate. The bill does not increase or decrease jail or prison sanctions. The bill may, however, increase the amount of fines collected by the Clerk of the Court within each judicial circuit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.49 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 Judiciary on March 29, 2021:
Removes the felony offenses created under the bill, and instead, allows for certain enhanced fines. The amendment authorizes an additional fine when a false report of a crime results in:

- Significant costs to first responders;
- Great physical harm to a person as a result of the response by first responders; or
- Death of a person as the result of the response by first responders.

B. Amendments:

None.

182662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 817.49, Florida Statutes, is amended to read:

817.49 False reports of commission of crimes; penalty.—

(1) A person who ~~whoever~~ willfully imparts, conveys, or causes to be imparted or conveyed to a ~~any~~ law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing

such information or report to be false, when ~~in that~~ no such crime has ~~had~~ actually been committed, commits ~~shall upon conviction thereof be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) As used in this subsection, the term “public safety agency” means a law enforcement agency, a professional or volunteer fire department, an emergency medical service, an ambulance service, or any other public entity that provides first responder services to respond to crimes, to assist victims of crimes, or to apprehend offenders.

(b) In addition to the criminal penalty for violating subsection (1), if the offense results in:

1. A response by a federal, a state, a district, a municipal, or any other public safety agency to address the reported crime, and the combined cost incurred by all responding agencies exceeds $1,000, the person may be sentenced to pay a fine of up to $5,000.

2. Great bodily harm, permanent disfigurement, or permanent disability as a proximate result of lawful conduct arising out of a response, the person may be sentenced to pay a fine of up to $7,500.

3. Death as a proximate result of lawful conduct arising out of a response, the person may be sentenced to pay a fine of up to $10,000.

Section 2. 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

182662

and insert:

A bill to be entitled

An act relating to false reports of crimes; amending s. 817.49, F.S.; defining the term “public safety agency”; authorizing enhanced fines for the willful making of false reports of crimes under certain circumstances; providing an effective date.

By Senator Boyd

A bill to be entitled

An act relating to false reports of crimes; amending s. 817.49, F.S.; providing a definition; providing enhanced criminal penalties for the willful making of false reports of crimes in certain circumstances; amending s. 921.0022, F.S.; ranking offenses created by the act on levels 3, 6, and 8 of the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. Section 817.49, Florida Statutes, is amended to read:

817.49 False reports of commission of crimes; penalty.—

(1) Except as provided in subsection (2), whoever willfully imparts, conveys, or causes to be imparted or conveyed to a ~~any~~ law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, when ~~in that~~ no such crime has ~~had~~ actually been committed, commits ~~shall upon conviction thereof be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) As used in this subsection, the term "public safety agency" means a law enforcement agency, a professional or volunteer fire department, an emergency medical service, an ambulance service, or any other public entity that provides first responder services to respond to crimes, to assist victims

of crimes, or to apprehend offenders.

(b) If the willful making of a false report of a crime as set forth in this section results in:

1. A response by a federal, state, district, municipal, or other public safety agency to address the reported crime, and the combined cost incurred by all responding agencies exceeds $1,000, the person making such report commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Great bodily harm, permanent disfigurement, or permanent disability as a proximate result of lawful conduct arising out of a response, the person making such report commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Death as a proximate result of lawful conduct arising out of a response, the person making such report commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraphs (c), (f), and (h) 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.
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.
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.
815.04(5)(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 which results in costs to responding agencies in excess of $1,000.
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.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.

860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
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)(a)	3rd	Alter, destroy, or conceal investigation 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).

(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	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(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.
812.13(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 which results in great bodily harm, permanent disfigurement, or permanent disability.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
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.
836.05	2nd	Threats; extortion.
836.10	2nd	Written 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.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
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.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(6)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(7)	1st	Knowing forgery of prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling

		or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or

		unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer

		or transport of a child from outside Florida to within the state.
787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.

794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
800.04(4)(b)	2nd	Lewd or lascivious battery.
800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
806.01(1)	1st	Maliciously damage dwelling

			or structure by fire or explosive, believing person in structure.
207	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
208	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
209	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
210	812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
211	812.13(2)(b)	1st	Robbery with a weapon.
212	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
213	817.49(2)(b)3.	1st	Willful making of a false report of a crime which results in death.

214	817.505(4)(c)	1st	Patient brokering; 20 or more patients.
215	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
216	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
217	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
218	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
219	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
220			

817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $50,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any

		object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135	1st	Trafficking in illegal drugs,

(1)(c)1.b.		more than 14 grams, less than 28 grams.
893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 100 grams or more, less than 300 grams.
893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
893.135 (1)(c)4.b.(II)	1st	Trafficking in fentanyl, 14 grams or more, less than 28 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, 200 grams or more, less than 400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, 5 kilograms or more, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, 28 grams or more, less than 200 grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than

		28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
893.135 (1)(m)2.c.	1st	Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.
893.135 (1)(n)2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds

21-01287-21 20211234__

		derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JIM BOYD
21st District

COMMITTEES:
Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Criminal Justice
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 10, 2021

Senator Jeff Brandes
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I respectfully request that SB 1234: False Reports of Crimes, be scheduled for a hearing in the Committee on Judiciary at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

Jim Boyd

cc: Tom Cibula
Joyce Butler
Celia Georgiades

REPLY TO:
☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

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

SB1234
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: FALSE Report of CRime 3

Name: DAVID Serdan

Job Title:

Address: 106 Wintergreen Dr
Street

Fruitland Park Fl 34731
City State Zip

Phone: 3528056597

Email: gottendave1955 @gmail.c

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

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

Representing: Self A Senior Citizen Candidate Abused Husband That Same Law Officer At Bottom

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

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

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

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

File MISC in ML

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

March 29, 2021
Meeting Date

1234
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic False Information to Law Enforcement

Name Jennifer Cook Pritt

Job Title Deputy Executive Director

Address PO Box 14038
Street

Tallahassee FL 32317
City *State* *Zip*

Phone 8502193631

Email jpritt@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs 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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1884

INTRODUCER: Senator Rodrigues

SUBJECT: Preemption of Firearms and Ammunition Regulation

DATE: March 29, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Favorable**
2.	Ravelo	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 1884 revises the Legislature's preemption of the field of the regulation of firearms and ammunition. Current law provides a person or certain organizations with the right to seek declaratory or injunctive relief and actual damages due to a local ordinance, regulation, measure directive, rule enactment, order, or policy regulating firearms or ammunition. The bill provides that the right to maintain a legal action against a preempted local regulation applies even if the local regulation is unwritten.

Existing s. 790.33, F.S., preempts the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the state. Any person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated in violation of s. 790.33 F.S., may file suit against the governmental entity for a declaratory judgment and injunctive relief. If a court determines the plaintiff is the prevailing party, the plaintiff may recover actual damages of up to $100,000 in addition to any attorney fees.

The bill also provides a mechanism for a plaintiff to recover damages and attorney's fees when a government entity changes its regulation while the regulation is being challenged under s. 790.33, F.S. Specifically, when a government entity voluntarily changes the regulation that was challenged pursuant to a complaint, the plaintiff challenging that regulation is considered the prevailing party and may recover actual damages and attorney fees.

The bill takes effect July 1, 2021.

II. Present Situation:

Home Rule Powers and Preemption

The Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in this state. Article VIII, section 1 of the Florida Constitution, endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

Counties

A county without a charter has such power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law.[1] Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors.[2] General law authorizes counties "the power to carry on county government"[3] and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."[4]

Municipalities

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.[5] Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,[6] acknowledges these constitutional grants of police powers and better defines municipal powers of self-government.[7] Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, or the charter for the county in which the municipality is located.[8]

---

[1] FLA. CONST. art. VIII, s. 1(f).
[2] *Id.* at (g).
[3] Section 125.01(1), F.S.
[4] *Id.* at (w).
[5] FLA. CONST. art. VIII, s. 2.
[6] Section 166.011, F.S.
[7] Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf. (last visited Mar. 11, 2021).
[8] Section 166.021(4), F.S.

State Preemption

Although local governments have broad home rule powers, the Legislature may preempt this self-government power and preclude local governments from exercising legislative authority in particular areas of law.[9] Florida law recognizes two types of preemption: express and implied.

Express preemption requires a specific legislative statement; it cannot be implied or inferred.[10] In cases where the Legislature expressly preempts an area or forbids local governments from certain actions, the Legislature must use clear language stating its intent so that "there is no problem with ascertaining what the Legislature intended."[11] On the other hand, implied preemption is found where the local legislation would present the danger of conflicting with the state's pervasive regulatory scheme.[12] Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area to the state, and there are strong public policy reasons for doing so.[13] In cases determining the validity of ordinances enacted in the face of express and implied state preemption, the effect has been to find such ordinances null, void, and unenforceable.[14]

The Joe Carlucci Uniform Firearms Act

The Joe Carlucci Uniform Firearms Act (Act), codified in s. 790.33, F.S., became law in 1987.[15] The policy and intent of the Act is stated as follows:

> It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.[16]

The Act accomplished its stated purpose by "occupying the whole field of regulation of firearms and ammunition," as stated in subsection (1) of the Act:

> PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county,

---

[9] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[10] *See City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).
[11] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[12] *See GLA & Assocs., Inc. v. City of Boca Raton*, 855 So. 2d 278, 282 (Fla. 4th DCA 2003).
[13] *Id.*
[14] *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993); *Hillsborough County v. Fla. Rest. Ass'n*, 603 So.2d 587, 591 (Fla. 2d DCA 1992) ("If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.")
[15] Chapter 87-23, Laws of Fla.
[16] Section 790.33(3)(a), F.S.

> city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.[17]

Since 1990 there has been a statewide 3-day waiting period as outlined in Florida's Constitution.[18] In 2011, the Legislature substantially amended the Act to provide an updated statutory overlay to the constitutional provisions addressing firearms.[19] These revisions included various express prohibitions and exceptions.[20]

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act,[21] local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits for certain sporting goods stores, and banned recreational shooting. Courts have continuously struck down these local regulations as violations of the Act's express state preemption in the field of firearms.[22]

Liability, Recovery, and Attorney Fees

The Act also includes provisions related to a party's liability that violates the Act's express state preemption. Any person, county, agency, municipality, district, or other entity that violates the state's express preemption in the field of firearms, the Act directs courts to declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction enjoining its enforcement.[23] If a court determines that the violation was knowing and willful, the elected or appointed official having jurisdiction may be assessed a civil fine of up to $5,000 (that may not be paid with public funds) and may be terminated or removed from the position.[24]

Furthermore, any person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the Act may sue the violator for a declaratory judgment, injunctive relief, and actual damages caused by the violation. If the plaintiff prevails in the suit, the Act directs a court to award reasonable attorney's fees and costs, including a contingency fee multiplier and actual damages up to $100,000.[25]

[17] Section 790.33(1), F.S.
[18] There shall be a mandatory period of 3 days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph. … This restriction shall not apply to a trade in of another gun. FLA. CONST. art. I, s. 8(b), 8(d).
[19] Chapter 2011-109, Laws of Fla.
[20] Section 790.33(3),(4), F.S.
[21] *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).
[22] *See Jensen v. Pinellas County*, 198 So.3d 754 (Fla. 2nd DCA 2016); *see also Florida Carry, Inc. v. University of Florida*, 180 So.3d 137 (Fla. 1st DCA 2015).
[23] Section 790.33(3)(b), F.S.
[24] *Id.* at (c), (d), and (e).
[25] *Id.* at (f).

Not every preempted regulation will necessarily provide for an opportunity to infer liability or recover any attorney's fees based on a suit. The City of Tallahassee, for example, has several firearms related ordinances that a court recently found "null and void, even if they ostensibly remained on the books" due to preemption.[26] The court, however, refused to issue attorney's fees and costs on behalf of the petitioner, Florida Carry Inc., because the actual regulations were not enforced. The city merely republished the already void ordinances, which the court found was not an actionable offense under s. 790.33, F.S.[27]

III. Effect of Proposed Changes:

The bill amends s. 790.33, F.S., to provide that a person or organization whose membership is adversely affected by a local regulation of firearms or ammunition that violates s. 790.33, F.S., may file suit even if the regulation is *unwritten*. Under current law, a person may challenge a local regulation based on a specific ordinance, regulation, measure, directive, rule, enactment, order, or policy. Successfully prosecuting a case may prove difficult, however, if the government entity's regulation was not made in writing.

The bill also provides that if the governmental entity defendant to a complaint alleging a violation of s. 790.33, F.S., voluntarily changes the ordinance, regulation, measure, directive, rule, enactment, order, or policy, written or unwritten, allegedly in violation of s. 790.33, F.S., the plaintiff is considered a prevailing plaintiff, with or without court action. As the prevailing party, the plaintiff may recover actual damages and attorney fees. This provision appears to address the issue of *mootness*. If a government agency were to change a regulation that is being challenged as a violation of state preemption prior to the conclusion of the litigation, the potential violation may be dismissed as *moot* because it is no longer in place.[28] Once dismissed as moot, the plaintiff would not be eligible to recover damages or attorney's fees despite the government entity changing what was challenged. When this scenario occurs under the bill, however, the plaintiff is considered the prevailing party for the purpose of actual damages and attorney's fees.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

---

[26] *Florida Carry, Inc. v. City of Tallahassee*, 212 So. 3d 452, (Fla. 1st DCA 2017).
[27] *Id*. at 464-5.
[28] In a case involving the University of Florida, for example, a court held there was no "justiciable controversy" when the University no longer enforced the regulation being challenged. *Florida Carry, Inc. v. Univ. of Florida*, 180 So. 3d 137, 153-4 (Fla. 1st DCA 2015). *See also Godwin v. State*, 593 So. 2d 211 (Fla. 1992) ("An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect.")

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:

SB 1884 may have an indeterminate net positive fiscal impact for persons and organizations adversely affected by a local government's unwritten action regarding the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation of firearms and ammunition.

The bill also may have an indeterminate net positive fiscal impact on plaintiffs challenging actions as violating s. 790.33, F.S. Under the bill, these plaintiffs may more easily recover attorney fees and actual damages by being declared the prevailing party if a defendant voluntarily changes the policy allegedly violating s. 790.33, F.S., after a complaint is filed.

C. Government Sector Impact:

The bill may cause an indeterminate net negative fiscal impact on government entities that violate s. 790.33, F.S., by providing that a plaintiff may recover attorney fees and actual damages if the governmental entity voluntarily changes the alleged violation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is difficult to determine the nature of the unwritten policies covered by the bill. Unwritten policies may include oral instructions given within a law enforcement agency.[29]

---

[29] *See Dougan v. Bradshaw*, 198 So. 3d 878 (Fla. 4th DCA 2016)(The Sheriff argued that a cause of action under s. 790.33, F.S., could not be maintained because the "policy" alleged in Appellant's complaint—i.e. retaining firearms seized as a result of a safety call or safety check until ordered by the court to return them—was an oral instruction pursuant to an Administrative Order and not a "policy" within the meaning of s. 790.33 F.S.).

VIII. Statutes Affected:

This bill substantially amends section 790.33 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 Rodrigues

27-01664A-21 20211884__

A bill to be entitled

An act relating to the preemption of firearms and ammunition regulation; amending s. 790.33, F.S.; providing that written or unwritten policies are subject to provisions allowing for recovery of damages if such policies violate specified provisions; providing that a plaintiff challenging a local government regulation concerning firearms is considered a prevailing plaintiff for certain purposes in specified circumstances; providing an effective date.

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

Section 1. Paragraph (f) of subsection (3) of section 790.33, Florida Statutes, is amended to read:

790.33 Field of regulation of firearms and ammunition preempted.—

(3) PROHIBITIONS; PENALTIES.—

(f)1. A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy, whether written or unwritten, promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by the violation. A court shall award the prevailing plaintiff in any such suit:

27-01664A-21 20211884__

a.~~1.~~ Reasonable attorney ~~attorney's~~ fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and

b.~~2.~~ The actual damages incurred, but not more than $100,000.

2. If after the filing of a complaint a defendant voluntarily changes the ordinance, regulation, measure, directive, rule, enactment, order, or policy, written or unwritten, promulgated or caused to be enforced in violation of this section, with or without court action, the plaintiff is considered a prevailing plaintiff for purposes of this section.

Interest on the sums awarded pursuant to this subsection shall accrue at the legal rate from the date on which suit was filed.

Section 2. This act shall take effect July 1, 2021.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RAY WESLEY RODRIGUES
27th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Alternating Chair*
Joint Committee on Public Counsel Oversight

March 18, 2021

The Honorable Jeff Brandes
Senate Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1884 – Preemption of Firearms and Ammunition Regulation

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place SB 1884, relating to Preemption of Firearms and Ammunition Regulation, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Ray Rodrigues

Ray Rodrigues
Senate District 27

Cc: Tom Cibula, Staff Director
Celia Georgiades, Administrative Assistant

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: ____________

Bill Number (if applicable): SB 1884

Topic: Preemption of Firearms & Ammunition Regulation

Amendment Barcode (if applicable): ____________

Name: Gaby Loewenstein

Job Title: ____________

Address: ____________ Phone: ____________

Street

____________ Email: ____________

City State Zip

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [X] Against

(The Chair will read this information into the record.)

Representing: Moms demand action Florida Chapter

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

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

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

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

S-001 (10/14/14)

Judiciary

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/2024
Meeting Date

SB 1884
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Preempt Firearms/Ammo Regs.

Name: TRISH NEELY

Job Title: DIRECTOR

Address: 2024 SHANGRI LA LANE
Street

Phone: 850 322 3317

TALLY, FL 32303
City *State* *Zip*

Email:

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: LEAGUE WOMEN VOTERS

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

3-29-21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1884

Meeting Date | Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Preemption of Regulation on Firearms etc

Name Barbara DeVane

Job Title

Address 625 E Brevard St | Phone 251-4280

Street

Tallahassee FL 32308 | Email barbaradevane1@yahoo.com

City State Zip

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

Representing FL NOW

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

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

March 29, 2021
Meeting Date

SB 1884
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 1884: Preemption of Firearms and Ammunition Regulation

Name Luis Valdes

Job Title Florida State Director

Address 8001 Forbes Place - Suite 202
Street

Phone 703-321-8585

Springfield VA 22151
City *State* *Zip*

Email Luis.Valdes@gunowners.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Gun Owners of America, 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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1950

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

SUBJECT: Financial Institutions

DATE: March 31, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	Bond	Cibula	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1950 makes a number of revisions to Florida law relating to financial institutions. The bill:

- Allows foreign nationals proposing to own 10 percent or more of any class of voting securities of a proposed or established bank to appear by video during the public hearing considering approval of the application;
- Prohibits the direct or indirect charging of a fee to a customer by a third-party agent or other entity for an online audit verification of the associated balance of an account which is maintained by a financial institution;
- Revises the required scheduling dates for examination of financial institutions;
- Allows the Office of Financial Regulation (OFR) 90 additional days to meet its statutory obligation to periodically examine a financial institution when a federal agency suspends or cancels a previously scheduled examination;
- Changes from "all or substantially all" assets to 50 percent of assets the limit of assets that a mutual financial institution may sell to a stock financial institution, absent first converting to a capital stock financial institution;
- Revises the definition of "financial institution" for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act;
- Revises the scope of the OFR's investigation of applicants seeking authority to start a bank or trust company to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of the target market to support the proposed bank or trust company;

- Revises a requirement that the proposed president or chief executive officer of a proposed banking corporation have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years to repeal the 5-year requirement;
- Requires that persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the OFR within 90 days after acquiring such interest;
- Defines a "de novo branch" for the purposes of an existing de novo interstate branching provision;
- Authorizes a family trust company or licensed family trust company to maintain the deposit account, required under current law, with any bank that is insured by the Federal Deposit Insurance Corporation, or with any credit union insured by the National Credit Union Administration, either of which must be located within the United States;
- Revises when family trust companies, licensed family trust companies, or foreign licensed family trust companies must file a required annual renewal application;
- Allows international bank agencies and international branches to maintain a required deposit in banks outside of Florida, provided the deposit is in a bank within the United States; and
- Requires qualified limited service affiliates to suspend otherwise permissible activities if the jurisdiction of an international trust entity served by the qualified limited service affiliate is identified on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action (black list) or on the list of Jurisdictions Under Increased Monitoring (grey list).

The bill is effective July 1, 2021.

II. Present Situation:

Regulation of Financial Institutions

Florida law defines the term "financial institution" broadly; the term includes "state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."[1]

However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.[2]

[1] Section 655.005(1)(i), F.S.

[2] For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. *See* ss. 663.062, 663.063, 663.409, and 663.531, F.S.

Dual Regulatory System

Banks and credit unions may be either state or federally chartered. The Office of Financial Regulation (OFR) is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.[3]

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).[4] National banks are required to be members of the Federal Reserve System; state banks may apply for membership.[5] The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.[6]

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).[7] Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.[8]

Consumer Protection Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[9] The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.[10] The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[11] Consumers may also file suit through private actions.[12]

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:
- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;

[3] Section 655.012(1)(a), F.S.
[4] 12 U.S.C. s. 481.
[5] 12 U.S.C. s. 208.3 and 222.
[6] 12 U.S.C. s. 248.
[7] *See* 12 U.S.C. s. 1751, et. seq.
[8] Section 657.033, F.S.; 12 U.S.C. s. 1784.
[9] Section 501.202, F.S.
[10] Sections 501.207 and 501.202, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on March 13, 2021).
[11] Section 501.203(2), F.S.
[12] Section 501.211, F.S.

- Cease and desist orders;
- Civil penalties of up to $10,000 per willful violation; and
- Civil penalties of up to $15,000 per willful violation where certain aggravating factors are found.[13]

Remedies for private parties are limited to:
- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.[14]

Exemptions under the FDUTPA

FDUTPA exempts certain entities from its governance, including:[15]
- Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission (OIR);
- Banks, credit unions, and savings and loan associations regulated by the OFR;
- Banks, credit unions, or savings and loan associations regulated by federal agencies; or
- Any person or activity regulated under the laws administered by the former Department of Insurance, which are now administered by the Department of Financial Services (DFS).

Examination of Financial Institutions

Pursuant to s. 655.045(1), F.S., the OFR is required to conduct and examination of each state financial institution at least every 18 months. Section 655.045(1)(a), F.S.; however, allows the OFR to accept an examination from an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, at least once every 36 months, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The alternating, joint, or concurrent examination authorized by this provision reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.[16]

According to OFR, many of the documents it must analyze in these examinations are paper files with digital copies not available. As such, examiners must be physically present at an institution to perform examinations. The ongoing COVID-19 pandemic has created issues in adhering to examination schedules. Additionally, other natural disasters (such as hurricanes) can create problematic examination environments.[17]

---

[13] Sections 501.207(1), 501.2075, 501.2077, and 501.208, F.S.
[14] Sections 501.211(1)-(2) and 501.2105, F.S.
[15] Section 501.212(4), F.S.
[16] Office of Financial Regulation, *House Bill 1641 Analysis* (March 8, 2021) (on file with the Senate Committee on Banking and Insurance).
[17] *Id.*

Financial Institution Acquisition of Assets and Assumption of Liabilities

Current law allows a financial entity, under s. 655.414, F.S., to acquire "all or substantially all" of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. Similarly, subsection (6) of the statute states that a mutual financial institution may not sell "all or substantially all" of its assets to a stock financial institution, subject to certain conditions. For both of these provisions, the term "substantially all" is not defined and may be subject to some conjecture. According to the OFR, this undefined term has caused some confusion in the financial industry.[18]

Money Laundering and Terrorist Financing in Financial Institutions Act

The Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act, under s. 655.50, F.S., was created to require the submission certain reports to the OFR and the maintenance of certain records involving currency or monetary instruments or suspicious activities where such reports and records deter the use of financial institutions to conceal, move, or provide proceeds relating to criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. Subsection (3) of the act defines "financial institutions" a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state. This definition is quite broad, and includes a number of entities over which the OFR generally does not have regulatory authority—such as the United States Postal Service, casinos, travel agencies—or are obsolete—such as telegraph companies.[19]

Credit Union Boards of Directors

Section 657.021(1)-(6), F.S., specifies the minimum requirements for boards of directors for credit unions, including the filling of vacancies, meeting requirements, and conduct requirements. As part of these requirements, subsection (2) requires that directors assuming office in a credit union make a prescribed oath, and a signed copy of the oath must be filed with the OFR within 30 days after election. According to the OFR, at the Federal-level, the NCUA historically required credit unions to submit a record of the names and addresses of the members of the board of directors, members of the committees on a particular form called "Report of Officials." The OFR had access to these documents through agreements with the NCUA. However, in 2009, the NCUA moved to a web-based system to collect this data and the forms were no longer collected.[20] At present Florida law does not require state-chartered credit unions to submit a similar report.

---

[18] *Supra* note 16.

[19] The world's last telegram was sent in 2013. Monica Sarkar, *The Day Telegrams Came to a Final STOP*, CNN (July 15, 2013).

[20] *NCUA Supervisory Letter 09-CU-17*, "Credit Union Online: Credit Union Profile and 5300 Call Report," National Credit Union Administration, *available at* https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/credit-union-online-credit-union-profile-and-5300-call-report (August 2009).

Target Markets

According to the American Bankers Association, nearly 75 percent of United States residents most often access their bank accounts via electronic platforms (i.e., via mobile device or personal computer).[21] With this ever-growing trend, and branch traffic slowing, many banks have been closing bank branches at a growing pace and making investments in electronic platforms.[22]

While the trend in banking has been to de-emphasize the local branch, a Florida application for authority to organize a banking corporation or trust company must describe the community where the principal office of the bank will be located[23] and part of the OFR's approval process looks at the need for, and ability to support, the proposed bank or trust company in the entity's primary service area.[24] In order for an application to be approved, the local conditions in the primary service area must indicate a reasonable promise of successful operation.[25] The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.[26]

Applications for Authority to Organize a Banking Corporation or Trust Company

Section 658.19, F.S., specifies the requirements for an application for authority to organize a banking corporation or trust company, which must be filed with the OFR by the proposed directors, and what the application must include. Upon the submission of this application, pursuant to s. 658.20, F.S., the OFR must investigate the:
- Character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors;
- Need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located; and
- Ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

Section 658.20, F.S., also authorizes the OFR to obtain criminal record information from the National Crime Information Center or from the Florida Department of Law Enforcement (FDLE) to conduct the required investigation.

To approve an application, the OFR must find, in part, that:[27]
- Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company;
- The proposed capitalization is in such amount as the OFR deems adequate;
- The proposed capital structure is in such form as the OFR may require;

[21] *Survey: Bank Customers Preference for Digital Channels Continues to Grow*, American Bankers Association, https://www.aba.com/about-us/press-room/press-releases/survey-bank-customers-preference-for-digital-channels-continues-to-grow (November 5, 2019).
[22] *Id.*
[23] Section 658.19, F.S.
[24] Section 658.20, F.S.
[25] Rule 69U-105.206(2)(a), F.A.C.
[26] Rule 69U-105.206(2)(a)1.-2., F.A.C.
[27] Section 658.21. F.S.

- The proposed officers have sufficient financial institution experience, ability, standing, and reputation in order to be approved. As part of this requirement, the proposed president or chief executive officer must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years;
- The corporate name of the proposed state bank or trust company is approved by the OFR; and
- Provision has been made for suitable quarters at the location specified in the application.

In regards to the requirement that the proposed president or chief executive officer have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years, the OFR has expressed a concern that this provision narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank. By comparison, proposed chief executive officers of proposed nationally chartered banks are not subject to a similar restriction.[28]

Trust Representative Offices

According to 12 C.F.R. s. 9.2(k), a trust representative office is an office of a national bank, other than a main office or a branch, at which the bank engages in certain activities relating to their fiduciary business. Examples of such activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer; and inspecting or maintaining custody of fiduciary assets or holding title to real property.

In Florida, the OFR supervises state-chartered banks with trust powers and state-chartered trust companies. The determination of whether an entity qualifies as a "trust company" is dependent on whether an entity has "trust powers" and is engaging in "trust business," defined as follows:[29]

- "Trust powers" means the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association, or trust company by, or pursuant to, the laws of this or any other jurisdiction to engage in trust business.
- "Trust business" means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or when conducted by any other business organization for compensation that the OFR does not consider to be de minimis.

Based on this definition, an office that provides just ancillary fiduciary services to a nationally-chartered bank or trust company (or one chartered by another state) would not qualify as a trust company.

[28] *Supra* note 16.
[29] Section 658.12, F.S.

Controlling Interests in State Banks and Trust Companies

Under s. 658.28, F.S., for the purposes of determining whether a party has acquired control of a bank or trust company, in general, a party will be presumed to have such control if any of the following are true:
- The party directly or indirectly owns, control, or has the power to vote 25 percent or more of any class of voting securities of the institution;
- The party controls, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution;
- The party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution; or
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence over the bank or trust company.

In addition, the OFR is not limited to the above standards or criteria in determining whether any such person may be deemed to be acting by or through one or more other persons. The presumption above, regarding where a party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution, is rebuttable by notifying the OFR and presenting information rebutting control at an informal conference.[30] After such hearing, if the OFR determines that the party in question does, in fact, have control of the bank or trust company, the party must file the application required under s. 658.28(1), F.S.

Section 658.28(1), F.S., also requires persons seeking to purchase or otherwise acquire controlling interest in a state bank or trust company, to first apply with the OFR for a certificate of approval. Approval is based upon the OFR’s determination, after investigation and review, that the proposed new owners are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company and that the interests of the other stockholders, if any, the depositors and creditors of the bank or trust company, and the public generally will not be jeopardized by the proposed change.

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval. However, according to the OFR, not every such acquisition is planned. Shares may pass to an unapproved owner by operation of law, such as by way of inheritance. For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.[31]

De Novo Interstate Branching by State Banks

Section 658.2953(11)(a), F.S., permits state banks to, with approval of the OFR, establish and maintain a de novo branch or acquire a branch in a state other than Florida by submitting an

[30] Section 658.28(3), F.S.
[31] *Supra* note 16.

application to the OFR. Section 658.2953(11)(a), F.S., also allows out-of-state bank meeting certain conditions to establish and maintain a de novo branch or acquire a branch in Florida.

Family Trust Companies

A family trust company provides trust services to wealthy families and cannot provide services to the general public. These services include serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family might wish to form a family trust company in order to keep family matters more private than they would be if turned over to an independent trustee, to gain liability protection, to establish its own trust fee structure, and to obtain tax advantages. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.

In 2014, the Legislature authorized the creation of family trust companies in Florida.[32] The Florida Family Trust Company Act is codified in ch. 662, F.S. The Act allows for the creation of family trust companies in Florida and provides differing degrees of regulatory oversight by the OFR.

Chapter 662, F.S., creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies. A "family trust company" is a corporation or limited liability company that is exclusively owned by one or more family members, is organized or qualified to do business in this state, and acts or proposes to act as a fiduciary to serve one or more family members.[33] A "licensed family trust company" means a family trust company that has been issued a license that has not been revoked or suspended by the OFR.[34] A "foreign licensed family trust company" means a family trust company that is licensed by a state other than Florida, or the District of Columbia.[35] Family trust companies that are not licensed and foreign family trust companies must register the OFR and renew such registration annually.[36] Family trust companies and licensed family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.[37]

Asset Maintenance or Capital Equivalency for International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution in regards to loans, extension of credit, or investment. An international bank agency may act as custodian and may furnish investment

[32] Chapter 2014-97, Laws of Fla.
[33] *See* s. 662.111(12), F.S., and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members
[34] *See* s. 662.111(16), F.S.
[35] *See* s. 662.111(15), F.S.
[36] *See* ss. 662.122 and 662.128, F.S.
[37] Section 662.1225(1), F.S.

management, and investment advisory services, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international, foreign, or domestic investments.[38] An international branch has the same rights and privileges as a federally-licensed international branch.[39] Under s. 663.07, F.S., each international bank agency and international branch must maintain, with one or more banks in this state evidence of dollar deposits or investment securities, as specified by the OFR, of the type that may be held by a state bank.

Financial Action Task Force (FATF)

The FATF is an international global money laundering and terrorist financing watchdog group. It is an intergovernmental policy-making body that sets international standards and advocates to bring about national legislative and regulatory reforms.[40] The FATF currently comprises 37 member jurisdictions and two regional organizations (the European Council and the Gulf Co-operation Council). These members represent most major global financial centers.[41] As part of its activities, the FATF publishes, three times per year, two public documents that identify jurisdictions having weak measures to combat money laundering and terrorist financing: 1) High-Risk Jurisdictions subject to a Call for Action, and 2) Jurisdictions under Increased Monitoring.[42]

High-Risk Jurisdictions subject to a Call for Action

According to FATF, the jurisdictions identified on the High-Risk Jurisdictions subject to a Call for Action (also known as the "black list") have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For such jurisdictions, the FATF calls on all of its members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing risks emanating from the country.[43] Due to the ongoing COVID-19 pandemic, FATF has paused the review process for countries on the list of High-Risk Jurisdictions subject to a Call for Action given that the countries on the list—North Korea and Iran—are already subject to the FATF's call for countermeasures.[44]

---

[38] Section 663.061, F.S.
[39] Section 663.064, F.S.
[40] *About*, Financial Action Task Force, https://www.fatf-gafi.org/about/ (last visited March 16, 2021).
[41] *FATF Members and Observers*, Financial Action Task Force, https://www.fatf-gafi.org/about/membersandobservers/ (last visited March 16, 2021).
[42] *Topic: High-risk and other monitored jurisdictions,* Financial Action Task Force, https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc(fatf_releasedate) (last visited March 16, 2021).
[43] *Id*.
[44] *High-Risk Jurisdictions subject to a Call for Action - February 2021,* Financial Action Task Force, http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2021.html (last visited March 16, 2021); *High-Risk Jurisdictions subject to a Call for Action - February 2021*, Financial Action Task Force, http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html (February 21, 2020).

Jurisdictions under Increased Monitoring

Jurisdictions identified as being under increased monitoring (also known as the "grey list") by the FATF are actively working with the organization to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. Jurisdictions identified as such are subject to increased monitoring, but have committed to swiftly resolve the deficiencies identified by the FATF within an agreed upon timeframe.[45]

Qualified Limited Service Affiliates of International Trust Entities (QLSA)

Part IV of Chapter 663, F.S., regulates QLSAs in Florida. Pursuant to s. 663.530, F.S., a QLSA means a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531, F.S., related to or for the benefit of an affiliated international trust entity. This section also defines an "international trust entity" as an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised. Section 663.531(1), F.S., allows a QLSA to engage in:

- Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- Advertising and marketing at trade, industry, or professional events;
- Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

To qualify as a QLSA, the entity must file a written notice with the OFR that includes, in part, a declaration (under penalty of perjury) that jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.[46] While this is a required disclosure, the OFR asserts that it does not have a mechanism to suspend or revoke the qualification of the QLSA if the jurisdiction of the international trust entity is later added to this list.[47]

III. Effect of Proposed Changes:

Section 1 amends s. 120.80(3)(a), F.S., to allow a foreign national proposing to own or control 10 percent or more of any class of voting securities of a proposed or established bank, trust

[45] *Jurisdictions under Increased Monitoring - February 2021*, Financial Action Task Force, http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2021.html (February 2021). Countries currently on the grey list, as of the most recent February 2021 update are: Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Ghana, Jamaica, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Senegal, Syria, Uganda, Yemen, and Zimbabwe.

[46] Section 663.532(1)(i)3., F.S.

[47] *Supra* note 16.

company, or capital stock savings association to appear at the public hearing required to be held for such matter via video conference in lieu of appearing personally.

Section 2 amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

Section 3 creates s. 501.2076, F.S., to make the direct or indirect charging of a customer a fee, by a third-party agent or other entity, for an online audit verification of the associated balance of an account which is maintained by a financial institution, a violation of the FDUTPA.

Section 4 amends s. 518.117, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

Section 5 amends s. 655.045(1)(a), F.S., to remove the specific date of July 1, 2014, which the scheduling of examinations are pegged to for financial institutions. Instead, examinations will be on a rolling basis, but still be conducted every 18 months or as otherwise required. The OFR believes that this revision will give it greater flexibility to schedule examinations and work cooperatively with federal regulators.[48]

The section also creates s. 655.045(1)(f), F.S., to allow the OFR an additional 90 days to meet the examination frequency requirement under the section when a federal agency suspends or cancels a previously scheduled examination. The examination requirement would be considered to have been met upon the federal agency in question conducting the examination—or the OFR conducting the examination instead.

The section also amends s. 655.045(4), F.S., to require each director of a financial institution to sign a receipt regarding an examination report, the signature certifying that the director has read the report. The signed receipt must be returned to the OFR.

Section 6 amends s. 655.414, F.S., to revise language allowing financial entities to acquire "all or substantially all" of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. The bill updates this language to read "50 percent or more." The 50 percent is calculated based on the most recent quarterly reporting date.

Similarly, subsection (6) of the section presently states that a mutual financial institution may not sell "all or substantially all" of its assets to a stock financial institution, without certain conditions being met. The bill also updates this to read "50 percent or more."

Section 7 amends s. 655.50, F.S., to revise the definition of "financial institution" for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act. The definition is changed to repeal a reference to federal law and to instead mean any financial institution, as defined in Florida law,[49] other than an international representative office, an international administrative office, or a qualified limited service affiliate.

[48] *Id.*
[49] Section 655.005(1)(i), F.S.

Section 8 creates s. 657.021(2), F.S., to require credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, to submit to the OFR the names and residence addresses of the elected person or persons on a specified form. The provision also directs the OFR to adopt rules to create the form.

Section 9 repeals s. 657.028(6), F.S., which subsection requires notice to OFR of changes in management similar to those created in Section 8 of this bill.

Section 10 amends s. 658.12, F.S., to create a definition for "target market" to mean the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 11 amends s. 658.20, F.S., to incorporate the definition of target market created in Section 10 and effectively expand the scope of the OFR's investigation (regarding an application for authority to organize a bank or trust company) to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company.

Section 12 amends s. 658.21, F.S., to revise a requirement that, for the OFR to approve an application for authority to organize a banking corporation or trust company, the proposed president or chief executive officer must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The revision eliminates the requirement that the 1 year of experience be within the last 5 years.

Section 13 creates s. 658.28, F.S., to create a requirement that persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the office within 90 days after acquiring such interest. The bill also stipulates that this interest does not give rise to a presumption of control unless such persons votes the shares or the office has issued a certificate of approval in response to an application approval of change control pursuant to subsection (1) of the section.

Section 14 amends s. 658.2953, F.S., to create a definition of "de novo branch" to mean a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of specified transactions. This clarifies the applicability of s. 658.2953(11), F.S., which regulates de novo interstate branching, but currently does not define the term.

Section 15 amends s. 662.1225, F.S., to allow a family trust company or licensed family trust company to maintain the deposit account, required under the section, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States. Under current law, such companies were limited to only state-chartered or national financial institution that has a principal or branch office in Florida.

Section 16 amends s. 662.128, F.S., to require family trust companies, licensed family trust companies, or foreign licensed family trust companies to file an annual renewal application no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application. The previous requirement under s. 662.128, F.S., has also been retained in the section, specifying that such entities must file their renewal 45 days after the end of each calendar year. As presently written, this may require entities, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year.

Section 17 amends s. 633.07, F.S., to allow international bank agencies and international branches to maintain the required deposit amount under the section with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States. Under current law, the deposit had to be maintained at a bank in Florida.

Section 18 amends s. 663.532, F.S., to require qualified limited service affiliates (QLSA) to suspend the activities the QLSA is otherwise permitted to engage in, under s. 663.408, F.S., if the QLSA or the OFR becomes aware that the jurisdiction of an international trust entity served by the QLSA is included on the Financial Action Task Force (FATF) list of High-Risk Jurisdictions subject to a Call for Action (black list) or list of Jurisdictions Under Increased Monitoring (grey list). Such a suspension of activities must continue until the jurisdiction in question is removed from the FATF black list or grey list.

As of the most recent February 2021 update, the following countries are on the FATF grey list: Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Ghana, Jamaica, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Senegal, Syria, Uganda, Yemen, and Zimbabwe. Presently, North Korea and Iran are on the FATF black list.

Section 19 amends s. 736.0802, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

Section 20 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared tax revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 5 of the CS/CS/SB 1950 could lead to the OFR taking on additional examination costs in the event that a federal agency suspends or cancels a financial institution examination and the OFR ends up conducting the examination in that agency's stead.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.80, 475.01, 518.117, 655.045, 655.414, 655.50, 657.021, 657.028, 658.12, 658.20, 658.21, 658.28, 658.2953, 662.1225, 662.128, 663.07, 663.532, and 736.0802.

This bill creates section 501.2076 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/CS by Judiciary on March 29, 2021:

The committee substitute:

- Removes an unnecessary qualifier in the bill that would require the federal banking regulators to lift the suspension of their examination in order to trigger the 90 day extension for state regulators to act.
- Broadens the definition of "financial institution" in the statutes regarding money laundering to include all financial institutions except 3 specific types.
- Adds repeal of a subsection in current law regarding notice of management change in a credit union, which subsection is replaced by similar language in the bill.
- Removes from the bill a change to the authorized level of investments in real estate, furniture, and equipment that a credit union may own.
- Removes from the bill a new section of law regulating trust representative offices, a branch office of a bank or trust where some limited trust activity may occur.
- Adds that funds of a family trust company may also be deposited in an NCUA-insured credit union.
- Corrects language that would have required two annual reports to OFR by a family trust company
- Adds a correction to current statutes, changing the titles of references regarding money laundering and counterterrorism.

CS by Banking and Insurance on March 16, 2021:

The committee substitute:

- Deletes language authorizing the OFR Commissioner to delay financial institutions during certain emergency conditions and replaces it with a provision to allow the OFR ninety additional days to meet the financial institution examination requirement when a federal agency suspends or cancels a previously scheduled examination.
- Clarifies a provision allowing financial entities to acquire "50 percent or more" of the assets of, or assume all or any part of the liabilities of, any other financial institution, under certain conditions.
- Clarifies a provision stating that mutual financial institution may not sell "50 percent or more" of its assets to a stock financial institution, without certain conditions being met.
- Deletes a provision authorizing the OFR to not publish registration applications for a family trust company or a foreign licensed family trust company in the Florida Administrative Register.
- Requires QLSA's to suspend previously permissible activities if the OFR or the QLSA becomes aware that a jurisdiction of an international trust entity served by the QLSA is included on the FATF black list or the of list Jurisdictions Under Increased Monitoring (grey list).

B. Amendments:

None.

786308

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/29/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 192 - 524
and insert:
federal agency conducting the examination or upon the office conducting the examination instead.

(4) A copy of the report of each examination must be furnished to the financial institution ~~entity~~ examined and presented to the board of directors at its next regular or special meeting. Each director shall review the report and acknowledge receipt of the report and such review by signing and

786308

dating the prescribed signature page of the report and returning a copy of the signed page to the office.

Section 6. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office and upon such conditions as the commission prescribes by rule, a financial institution ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~ of the assets or liabilities of, or a combination of assets and liabilities of, or assume all or any part of the liabilities of, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.—Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation, if applicable, of the transferring financial institution upon execution of the plan,

786308

or a provision setting forth the business plan for the continued operation of each financial institution after the execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3) ~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office disapproves the plan, it shall state its

786308

objections and give the parties an opportunity to amend the plan to overcome such objections.

(4) ~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5) ~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(6) ~~(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A

786308

PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must also comply with requirements imposed by federal and other state law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

(7)~~(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell 50 percent or more ~~all or substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a credit union, the provision concerning proxy statements does not apply.

Section 7. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

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

(c) "Financial institution" has the same meaning as in s. 655.005(1)(i), excluding an international representative office, an international administrative office, or a qualified limited

786308

service affiliate ~~means a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state~~.

Section 8. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee responsibilities; oaths; reports to the office.—

(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected person or persons on a form adopted by the commission and provided by the office.

Section 9. Subsection (6) of section 657.028 is repealed.

Section 10. Paragraph (a) of subsection (5) of section 657.042, Florida Statutes, is amended to read:

657.042 Investment powers and limitations.—A credit union may invest its funds subject to the following definitions, restrictions, and limitations:

(5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE CREDIT UNION.—

(a) Up to 60 ~~5~~ percent of the equity ~~capital~~ of the credit union may be invested in the direct ownership of, or leasehold interests in, land, buildings, furniture, fixtures, and equipment, and improvements thereon, used or to be used by the credit union in the transaction of its business. This limitation

786308

applies to assets subject to a lease agreement which are required to be capitalized under criteria issued by the Financial Accounting Standards Board ~~real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business~~.

Section 11. Present subsections (20) through (24) of section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(20) "Target market" means the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 12. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located or in the target market that the bank or trust company intends to engage in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market ~~in the primary service area~~.

Section 13. Subsections (1) and (4) of section 658.21, Florida Statutes, are amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(1) Local and target market conditions indicate reasonable promise of successful operation for the proposed state bank or trust company. In determining whether an applicant meets the requirements of this subsection, the office shall consider all materially relevant factors, including:

(a) The purpose, objectives, and business philosophy of the proposed state bank or trust company.

(b) The projected financial performance of the proposed bank or trust company.

(c) The feasibility of the proposed bank or trust company, as stated in the business plan, particularly with respect to asset and liability growth and management.

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or

786308

directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law. At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has direct financial institution experience within the last 5 years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution ~~within the last 5 years~~.

Section 14. Present subsections (2), (3), and (4) of section 658.28, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

658.28 Acquisition of control of a bank or trust company.—

<u>(2) A person or a group of persons which acquires a controlling interest as contemplated by this section, either directly or indirectly, in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest. Such an interest does not give</u>

786308

rise to a presumption of control until the person or group of persons votes the shares or the office has issued a certificate of approval in response to an application pursuant to subsection (1).

Section 15. Present paragraphs (b) and (c) of subsection (11) of section 658.2953, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection, to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(b) "De novo branch" means a branch of a bank which is originally established by the bank as a branch and does not become a branch of such bank as a result of:

1. The acquisition by the bank of a depository institution or a branch of a depository institution; or

2. The conversion, merger, or consolidation of any such institution or branch.

Section 16. Paragraph (d) of subsection (1) of section 662.1225, Florida Statutes, is amended to read:

662.1225 Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.—

(1) A family trust company or a licensed family trust company shall maintain:

(d) A deposit account at a bank insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration and located in the United States ~~with a state-chartered or national financial institution that has a principal or branch office in this state~~.

Section 17. Subsection (1) of section 662.128, Florida

786308

Statutes, is amended to read:

662.128 Annual renewal.—

(1) ~~Within 45 days after the end of each calendar year,~~ A family trust company, licensed family trust company, or foreign licensed family trust company shall file an ~~its~~ annual renewal application with the office on an annual basis no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application.

Section 18. Subsection (1) of section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international branch shall:

(a) Maintain with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States ~~in this state~~, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

786308

The commission shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

Section 19. Present subsections (4), (5), and (6) of section 663.532, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection (4) is added to that section, and paragraphs (i) and (j) of subsection (1) of that section are amended, to read:

663.532 Qualification.—

(1) To qualify as a qualified limited service affiliate under this part, a proposed qualified limited service affiliate must file a written notice with the office, in the manner and on a form prescribed by the commission. Such written notice must include:

(i) A declaration under penalty of perjury signed by the executive officer, manager, or managing member of the proposed qualified limited service affiliate that, to the best of his or her knowledge:

1. No employee, representative, or agent provides, or will provide, banking services; promotes or sells, or will promote or sell, investments; or accepts, or will accept, custody of assets.

2. No employee, representative, or agent acts, or will act, as a fiduciary in this state, which includes, but is not limited

786308

to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

3. The jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions Under Increased Monitoring ~~Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism~~.

(j) For each international trust entity that the proposed qualified limited service affiliate will provide services for in this state, the following:

1. The name of the international trust entity;

2. A list of the current officers and directors of the international trust entity;

3. Any country where the international trust entity is organized or authorized to do business;

4. The name of the home-country regulator;

5. Proof that the international trust entity has been authorized by charter, license, or similar authorization by its home-country regulator to engage in trust business;

6. Proof that the international trust entity lawfully exists and is in good standing under the laws of the jurisdiction where it is chartered, licensed, or organized;

7. A statement that the international trust entity is not

786308

in bankruptcy, conservatorship, receivership, liquidation, or in a similar status under the laws of any country;

8. Proof that the international trust entity is not operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction of its incorporation, through government intervention or any other extraordinary actions, and confirmation that it has not been in such a status or under such control at any time within the prior 3 years;

9. Proof and confirmation that the proposed qualified limited service affiliate is affiliated with the international trust entities provided in the notice; and

10. Proof that the jurisdictions where the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or that facilitate the financial services functions, banking, or fiduciary activities of the international trust entity are not listed on the Financial Action Task Force list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions Under Increased Monitoring ~~Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism~~.

The proposed qualified limited service affiliate may provide additional information in the form of exhibits when attempting to satisfy any of the qualification requirements. All information that the proposed qualified limited service affiliate desires to present to support the written notice must be submitted with the notice.

(4) The permissible activities provided in s. 663.531

786308

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

And the title is amended as follows:

Delete lines 32 - 61

and insert:

repealing s. 657.028(6), F.S., relating to credit union board member, committee member, and officer election and appointment record reporting requirements; amending s. 657.042, F.S.; revising certain limitations on credit union investments; amending s. 658.12, F.S.; defining the term “target market”; amending s. 658.20, F.S.; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or target market and the ability of such service area or target market to support new and existing bank facilities; amending s. 658.21, F.S.; revising financial institution application approval requirements to include consideration of target market conditions; deleting a requirement that certain proposed financial institution presidents or chief executive officers have certain experience within a specified timeframe; amending s. 658.28, F.S.; requiring a person or group to notify the office upon acquiring a controlling interest in a bank or trust company in this state; amending s. 658.2953, F.S.; defining the term “de novo branch”; amending s.

786308

662.1225, F.S.; revising the type of institution with which certain family trust companies are required to maintain a deposit account; amending s. 662.128, F.S.; revising the timeframe for filing renewal applications for certain family trust companies; amending s. 663.07, F.S.; revising the banks with which international bank agencies or branches shall maintain certain deposits; amending s. 663.532, F.S.; revising references to lists of jurisdictions used for qualifying qualified limited service affiliates; requiring limited service affiliates to

104868

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Gruters) recommended the following:

Senate Substitute for Amendment (786308) (with title amendment)

Delete lines 192 - 524

and insert:

<u>federal agency conducting the examination or upon the office conducting the examination instead.</u>

(4) A copy of the report of each examination must be furnished to the <u>financial institution</u> ~~entity~~ examined and presented to the board of directors at its next regular or special meeting. <u>Each director shall review the report and</u>

104868

acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the office.

Section 6. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office and upon such conditions as the commission prescribes by rule, a financial institution ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~ of the assets or liabilities of, or a combination of assets and liabilities of, or assume all or any part of the liabilities of, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.—Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation, if applicable, of the

104868

transferring financial institution upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3) ~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

104868

If the office disapproves the plan, it shall state its objections and give the parties an opportunity to amend the plan to overcome such objections.

(4) ~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5) ~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

104868

(6) ~~(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must also comply with requirements imposed by federal and other state law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

(7) ~~(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell 50 percent or more ~~all or substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a credit union, the provision concerning proxy statements does not apply.

Section 7. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

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

(c) "Financial institution" has the same meaning as in s. 655.005(1)(i), excluding an international representative office,

104868

<u>an international administrative office, or a qualified limited service affiliate</u> ~~means a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state~~.

Section 8. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee <u>responsibilities; oaths; reports to the office</u>.—

<u>(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected person or persons on a form adopted by the commission and provided by the office.</u>

Section 9. <u>Subsection (6) of section 657.028 is repealed.</u>

Section 10. Present subsections (20) through (24) of section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

<u>(20) "Target market" means the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or</u>

104868

potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 11. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located or in the target market that the bank or trust company intends to engage in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market ~~in the primary service area~~.

Section 12. Subsections (1) and (4) of section 658.21, Florida Statutes, are amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(1) Local and target market conditions indicate reasonable promise of successful operation for the proposed state bank or trust company. In determining whether an applicant meets the requirements of this subsection, the office shall consider all materially relevant factors, including:

104868

(a) The purpose, objectives, and business philosophy of the proposed state bank or trust company.

(b) The projected financial performance of the proposed bank or trust company.

(c) The feasibility of the proposed bank or trust company, as stated in the business plan, particularly with respect to asset and liability growth and management.

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law. At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has direct financial institution experience within the last 5 years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an

104868

executive officer, director, or regulator of a financial institution ~~within the last 5 years~~.

Section 13. Present subsections (2), (3), and (4) of section 658.28, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

658.28 Acquisition of control of a bank or trust company.—

(2) A person or a group of persons which acquires a controlling interest as contemplated by this section, either directly or indirectly, in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest. Such an interest does not give rise to a presumption of control until the person or group of persons votes the shares or the office has issued a certificate of approval in response to an application pursuant to subsection (1).

Section 14. Present paragraphs (b) and (c) of subsection (11) of section 658.2953, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection, to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(b) "De novo branch" means a branch of a bank which is originally established by the bank as a branch and does not become a branch of such bank as a result of:

1. The acquisition by the bank of a depository institution or a branch of a depository institution; or

2. The conversion, merger, or consolidation of any such institution or branch.

104868

Section 15. Paragraph (d) of subsection (1) of section 662.1225, Florida Statutes, is amended to read:

662.1225 Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.—

(1) A family trust company or a licensed family trust company shall maintain:

(d) A deposit account at a bank insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration and located in the United States ~~with a state-chartered or national financial institution that has a principal or branch office in this state~~.

Section 16. Subsection (1) of section 662.128, Florida Statutes, is amended to read:

662.128 Annual renewal.—

(1) ~~Within 45 days after the end of each calendar year,~~ A family trust company, licensed family trust company, or foreign licensed family trust company shall file an ~~its~~ annual renewal application with the office on an annual basis no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application.

Section 17. Subsection (1) of section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international branch shall:

(a) Maintain with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States ~~in this state~~, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The commission shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

Section 18. Present subsections (4), (5), and (6) of section 663.532, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection (4) is added to that section, and paragraphs (i) and (j) of subsection (1) of that section are amended, to read:

663.532 Qualification.—

(1) To qualify as a qualified limited service affiliate under this part, a proposed qualified limited service affiliate must file a written notice with the office, in the manner and on

104868

a form prescribed by the commission. Such written notice must include:

(i) A declaration under penalty of perjury signed by the executive officer, manager, or managing member of the proposed qualified limited service affiliate that, to the best of his or her knowledge:

1. No employee, representative, or agent provides, or will provide, banking services; promotes or sells, or will promote or sell, investments; or accepts, or will accept, custody of assets.

2. No employee, representative, or agent acts, or will act, as a fiduciary in this state, which includes, but is not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

3. The jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions Under Increased Monitoring ~~Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism~~.

(j) For each international trust entity that the proposed qualified limited service affiliate will provide services for in this state, the following:

1. The name of the international trust entity;

104868

2. A list of the current officers and directors of the international trust entity;

3. Any country where the international trust entity is organized or authorized to do business;

4. The name of the home-country regulator;

5. Proof that the international trust entity has been authorized by charter, license, or similar authorization by its home-country regulator to engage in trust business;

6. Proof that the international trust entity lawfully exists and is in good standing under the laws of the jurisdiction where it is chartered, licensed, or organized;

7. A statement that the international trust entity is not in bankruptcy, conservatorship, receivership, liquidation, or in a similar status under the laws of any country;

8. Proof that the international trust entity is not operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction of its incorporation, through government intervention or any other extraordinary actions, and confirmation that it has not been in such a status or under such control at any time within the prior 3 years;

9. Proof and confirmation that the proposed qualified limited service affiliate is affiliated with the international trust entities provided in the notice; and

10. Proof that the jurisdictions where the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or that facilitate the financial services functions, banking, or fiduciary activities of the international trust entity are not listed on the Financial

104868

Action Task Force list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions Under Increased Monitoring ~~Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism~~.

The proposed qualified limited service affiliate may provide additional information in the form of exhibits when attempting to satisfy any of the qualification requirements. All information that the proposed qualified limited service affiliate desires to present to support the written notice must be submitted with the notice.

(4) The permissible activities provided in s. 663.531

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

Delete lines 32 - 61

and insert:

repealing s. 657.028(6), F.S., relating to credit union board member, committee member, and officer election and appointment record reporting requirements; amending s. 658.12, F.S.; defining the term “target market”; amending s. 658.20, F.S.; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or target market and the ability of such service area or target market to support new and existing bank facilities; amending s. 658.21, F.S.; revising financial institution application approval requirements to include consideration of target market conditions; deleting a requirement that certain proposed financial institution presidents or chief executive officers have certain experience within a specified timeframe; amending s. 658.28, F.S.; requiring a person or group to notify the office within a specified timeframe upon acquiring a controlling interest in a bank or trust company in this state; amending s. 658.2953, F.S.; defining the term “de novo branch”; amending s. 662.1225, F.S.; revising the type of institution with which certain family trust companies are required to maintain a deposit account; amending s. 662.128, F.S.; revising the timeframe for filing renewal applications for certain family trust companies; amending s. 663.07, F.S.; revising the banks with which international bank agencies or branches shall maintain certain deposits; amending s. 663.532, F.S.; revising references to lists of jurisdictions used for qualifying qualified limited service affiliates; requiring limited service affiliates to

By the Committee on Banking and Insurance; and Senator Gruters

A bill to be entitled

An act relating to financial institutions; amending s. 120.80, F.S.; providing that the failure of foreign nationals to appear through video conference at certain hearings is grounds for denial of certain applications; amending s. 475.01, F.S.; conforming a cross-reference; creating s. 501.2076, F.S.; providing that the imposition of fees or charges upon consumers for online audit verifications of financial institution accounts is a violation of the Florida Deceptive and Unfair Trade Practices Act; amending s. 518.117, F.S.; conforming a cross-reference; amending s. 655.045, F.S.; revising the interval for the Office of Financial Regulation to conduct certain examinations; authorizing the Office of Financial Regulation to delay examinations of financial institutions under certain circumstances; specifying that examination requirements are deemed met under certain circumstances; requiring copies of certain examination reports to be furnished to financial institutions; requiring certain directors to review and acknowledge receipt of such reports; amending s. 655.414, F.S.; revising the entities that may assume liabilities, and the liabilities that may be assumed, according to certain procedures, conditions, and limitations; specifying the basis for calculating percentages of assets or liabilities; amending s. 655.50, F.S.; revising the definition of the term "financial institution"; amending s. 657.021, F.S.;

requiring credit unions to submit specified information to the office after certain meetings; amending s. 657.042, F.S.; revising certain limitations on credit union investments; amending s. 658.12, F.S.; defining the term "target market"; amending s. 658.20, F.S.; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or target market and the ability of such service area or target market to support new and existing bank facilities; amending s. 658.21, F.S.; deleting a requirement that certain proposed financial institution presidents or chief executive officers have certain experience within a specified timeframe; creating s. 658.265, F.S.; defining the term "trust representative office"; authorizing a trust representative office to engage in certain activities; prohibiting a trust representative office from engaging in fiduciary activities; amending s. 658.28, F.S.; requiring a person or group to notify the office upon acquiring a controlling interest in a bank or trust company in this state; amending s. 658.2953, F.S.; defining the term "de novo branch"; amending s. 662.1225, F.S.; revising the type of institution with which certain family trust companies are required to maintain a deposit account; amending s. 662.128, F.S.; revising the timeframe for filing renewal applications for certain family trust companies; amending s. 663.07, F.S.; revising the banks with which international bank agencies or branches shall maintain certain deposits; amending s. 663.532, F.S.; requiring limited service affiliates to suspend certain permissible activities under certain circumstances; specifying that such suspensions remain in effect until certain conditions are met; amending s. 736.0802, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(3) OFFICE OF FINANCIAL REGULATION.—

(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1.a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Register notice of the application within 21 days after receipt.

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission shall by

rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., an application for license for a new bank, new trust company, new credit union, new savings and loan association, or new licensed family trust company must be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. An application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, a new credit union, or a new licensed family trust company by the appropriate insurer.

4. In the case of an application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of an application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings

association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of such foreign national to appear personally at or participate through video conference in the hearing shall be grounds for denial of the application. Notwithstanding s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

Section 2. Subsection (4) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(24) ~~s. 658.12(23)~~.

Section 3. Section 501.2076, Florida Statutes, is created to read:

501.2076 Violations involving consumer financial institution account fees.—The imposition of a fee or other charge by a third party agent or entity directly or indirectly upon a consumer for an online audit verification of an account maintained by a financial institution as defined in s. 655.005 or of the associated balance of such account is a violation of

this part.

Section 4. Section 518.117, Florida Statutes, is amended to read:

518.117 Permissible investments of fiduciary funds.—A fiduciary that is authorized by lawful authority to engage in trust business as defined in s. 658.12(21) ~~s. 658.12(20)~~ may invest fiduciary funds in accordance with s. 660.417 so long as the investment otherwise complies with this chapter.

Section 5. Paragraph (a) of subsection (1) and subsection (4) of section 655.045, Florida Statutes, are amended, and paragraph (f) is added to subsection (1) of that section, to read:

655.045 Examinations, reports, and internal audits; penalty.—

(1) The office shall conduct an examination of the condition of each state financial institution at least every 18 months. The office may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations. The office may use continuous, phase, or other flexible scheduling examination methods for very large or complex state financial institutions and financial institutions owned or controlled by a multi-financial institution holding company. The office shall consider examination guidelines from federal regulatory agencies in order to facilitate, coordinate, and standardize examination processes.

(a) The office may accept an examination of a state financial institution made by an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. If the office accepts an examination report in accordance with this paragraph, ~~However, at least once during each 36-month period beginning July 1, 2014,~~ the office shall conduct the subsequent ~~an~~ examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The office may furnish a copy of all examinations or reviews made of financial institutions or their affiliates to the state or federal agencies participating in the examination, investigation, or review, or as otherwise authorized under s. 655.057.

(f) In coordinating an examination required under this section, if a federal agency suspends or cancels a previously scheduled examination of a financial institution, the office has an additional 90 days to meet the examination requirement of this section. In such case, the requirement is deemed met by the federal agency conducting the examination upon the lifting of the suspension or upon the office conducting the examination instead.

(4) A copy of the report of each examination must be furnished to the financial institution ~~entity~~ examined and presented to the board of directors at its next regular or special meeting. Each director shall review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the office.

Section 6. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office and upon such conditions as the commission prescribes by rule, a financial institution ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~ of the assets or liabilities of, or a combination of assets and liabilities of, or assume all or any part of the liabilities of, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.—Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation, if applicable, of the transferring financial institution upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3) ~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office disapproves the plan, it shall state its objections and give the parties an opportunity to amend the plan to overcome such objections.

(4) ~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or

stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5) ~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(6) ~~(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must also comply with requirements imposed by federal and other state

597-02918-21 20211950c1

law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

(7) ~~(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell 50 percent or more ~~all or substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a credit union, the provision concerning proxy statements does not apply.

Section 7. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

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

(c) "Financial institution" means a state association, a bank, a trust company, a credit union, a credit card bank, an international bank agency, or an international branch ~~financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state~~.

Section 8. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3)

597-02918-21 20211950c1

through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee.—

(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected person or persons on a form adopted by the commission and provided by the office.

Section 9. Paragraph (a) of subsection (5) of section 657.042, Florida Statutes, is amended to read:

657.042 Investment powers and limitations.—A credit union may invest its funds subject to the following definitions, restrictions, and limitations:

(5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE CREDIT UNION.—

(a) Up to 60 ~~5~~ percent of the equity ~~capital~~ of the credit union may be invested in the direct ownership of, or leasehold interests in, land, buildings, furniture, fixtures, and equipment, and improvements thereon, used or to be used by the credit union in the transaction of its business. This limitation applies to assets subject to a lease agreement which are required to be capitalized under criteria issued by the Financial Accounting Standards Board ~~real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business~~.

Section 10. Present subsections (20) through (24) of

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

section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(20) "Target market" means the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 11. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located or in the target market that the bank or trust company intends to engage in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market ~~in the primary service~~

~~area~~.

Section 12. Subsection (4) of section 658.21, Florida Statutes, is amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law. At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has direct financial institution experience within the last 5 years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution ~~within the last 5 years~~.

Section 13. Section 658.265, Florida Statutes, is created to read:

658.265 Trust representative offices.—

(1) For purposes of this section, the term "trust representative office" means an office of a bank or trust company other than a main office or branch of a bank or trust company at which activities ancillary to fiduciary business are conducted.

(2) A trust representative office may engage in the following ancillary activities:

(a) Advertising, marketing, and soliciting for fiduciary business.

(b) Contacting existing or potential customers, answering questions, and providing information about matters related to customer accounts.

(c) Acting as a liaison between the bank or trust company and the customer, including, but not limited to, forwarding requests for distribution or changes in investment objectives or forwarding forms and funds received from the customer.

(d) Inspecting or maintaining custody of fiduciary assets or holding title to real property.

(3) A trust representative office may not engage in any activities considered to be fiduciary in nature, including, but not limited to:

(a) Acting as a trustee, an executor, an administrator, a registrar of stocks and bonds, a transfer agent, a guardian, an assignee, a receiver, or a custodian under a uniform gifts to minors act;

(b) Acting as an investment adviser, if the bank or trust

company receives a fee for its investment advice; or

(c) Acting in any capacity in which the bank or trust company possesses investment discretion on behalf of another.

Section 14. Present subsections (2), (3), and (4) of section 658.28, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

658.28 Acquisition of control of a bank or trust company.—

(2) A person or a group of persons that acquires a controlling interest as contemplated by this section, either directly or indirectly, in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest. Such an interest does not give rise to a presumption of control until the person or group of persons votes the shares or the office has issued a certificate of approval in response to an application pursuant to subsection (1).

Section 15. Present paragraphs (b) and (c) of subsection (11) of section 658.2953, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection, to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(b) "De novo branch" means a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of:

1. The acquisition by the financial institution of a depository institution or a branch of a depository institution;

or

2. The conversion, merger, or consolidation of any such institution or branch.

Section 16. Paragraph (d) of subsection (1) of section 662.1225, Florida Statutes, is amended to read:

662.1225 Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.—

(1) A family trust company or a licensed family trust company shall maintain:

(d) A deposit account at a bank insured by the Federal Deposit Insurance Corporation located in the United States ~~with a state-chartered or national financial institution that has a principal or branch office in this state~~.

Section 17. Subsection (1) of section 662.128, Florida Statutes, is amended to read:

662.128 Annual renewal.—

(1) Within 45 days after the end of each calendar year, a family trust company, licensed family trust company, or foreign licensed family trust company shall file its annual renewal application with the office. The annual renewal application shall be filed annually no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application of the family trust company, licensed family trust company, or foreign licensed family trust company.

Section 18. Subsection (1) of section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international branch

shall:

(a) Maintain with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States ~~in this state~~, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The commission shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

Section 19. Present subsections (4), (5), and (6) of section 663.532, Florida Statutes, are redesignated as subsections (5), (6), and (7) respectively, and a new subsection (4) is added to that section, to read:

663.532 Qualification.—

(4) The permissible activities provided in s. 663.408 relating to a specific jurisdiction must be suspended by the qualified limited service affiliate if either the qualified limited service affiliate or the office becomes aware that the jurisdiction of an international trust entity served by the qualified limited service affiliate is included on the Financial Action Task Force list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions Under Increased Monitoring. Suspensions pursuant to this subsection must remain in effect until the jurisdiction is removed from the Financial Action Task Force list of High Risk Jurisdictions subject to a Call for Action or list of Jurisdictions Under Increased Monitoring.

Section 20. Paragraph (a) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)(a) An investment by a trustee authorized by lawful authority to engage in trust business, as defined in s. 658.12(21) ~~s. 658.12(20)~~, in investment instruments, as defined in s. 660.25(6), that are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, is not presumed to be affected by a conflict between personal and fiduciary interests provided the investment otherwise complies with chapters 518 and 660 and the trustee complies with the requirements of this subsection.

Section 21. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill #1950**, relating to Financial Institutions, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Please let me know if you have any questions.

Sincerely,

Joe Gruters

Joe Gruters

Cc: Tom Cibula, Staff Director
Celia Georgiades, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021
Meeting Date

SB 1950
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Financial Institutions

Name: Alex Anderson

Job Title: Director of Legislative Affairs

Address: 200 E Gaines St
Street

Tallahassee — FL — 32301
City — *State* — *Zip*

Phone: 850-410-9601

Email: Alex.Anderson@flofr.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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 Judiciary

BILL: CS/SB 1508

INTRODUCER: Criminal Justice Committee and Senator Book

SUBJECT: Public Records

DATE: March 26, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Fav/CS**
2.	Ravelo	Cibula	JU	**Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1508, “Serena’s Law,” is designed to allow members of the general public to more easily identify individuals who have had civil protective injunctions ordered against them for acts involving offenses such as domestic violence, sexual violence, and stalking. The bill requires that each county recorder or clerk of the court publish on an Internet website the identity of each person who is the subject of such a protective injunction unless the defendant or respondent is a minor.

If this previously-described information is not on the website by a specified date, it must be made available to the general public on the website if the affected party, such as the victim, identifies the information and requests that it be made publicly available. The bill provides a process for this request and for notifying an affected party of the right to make this request. Further, an affected party may petition the circuit court for an order directing the county recorder or clerk of court to comply with the previously-described requirements.

Finally, the bill requires that final judgments for injunctions for protection be recorded in official records.

The Florida Court Clerks and Comptrollers states that clerks of the court anticipate an increase in labor costs on the court side to track the status of petitions for protective injunctions to post notices of injunctions on their publicly available websites. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Background Information Regarding "Serena"

According to information provided to legislative staff telephonically and via e-mail[1] from an attorney for the law firm representing "Serena," the person for whom the act is named, Serena was sexually assaulted as a child. The perpetrator was not criminally prosecuted, but a protective injunction against sexual violence was obtained against the perpetrator (i.e., the "respondent" subject to the injunction). The attorney further states that he is aware of two other injunctions against this individual for the protection of minors. One of those other injunctions was issued in Florida.

The attorney details the difficulties in obtaining information electronically on the protective injunction against the respondent in Serena's case:

> The first was a volunteer effort with a youth focused charity the offender pursued through his place of employment. The volunteer organization was notified of the injunction. The volunteer organization was unable to find … and verify the injunction, including through the use of a background check. The second was also a volunteer effort the offender pursued through his place of employment with a different youth focused charity. This charity was also unable to find and verify the injunction. The third was also a volunteer effort the offender pursued through his place of employment with a different youth focused charity. This final charity … was able to find the injunction because the background search tool it used had access to a law enforcement database.
>
> As an additional note, our firm has a Lexis Nexis public records searching tool and that tool does not show any of the injunctions discussed above, or any other ones that may be out there.[2]

It is unclear why the information regarding these injunctions was not electronically available on the clerk of the court's website.

Injunctions for Protection

Section 741.30, F.S., authorizes a family or household member who is either the victim of domestic violence[3] or has reasonable cause to believe he or she is in imminent danger of

[1] E-mail from Zachary W. Lombardo, Esq., attorney with Woodward, Pires & Lombardo, P.A., Naples, Florida, to staff of the Senate Committee on Criminal Justice, dated March 18, 2021 (on file with the Senate Committee on Criminal Justice).

[2] The attorney did not indicate that the information was unobtainable pursuant to a written request or by appearing in person at the clerk's office to request the information.

[3] "Domestic violence" is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

becoming the victim of any act of domestic violence to file in the circuit court a petition for an injunction against domestic violence.

Section 784.046, F.S., provides that:

- A petition for an injunction for protection against repeat violence may be filed in the circuit court by a person who is the victim of repeat violence[4] or the parent or legal guardian of any minor child who is living at home.
- A petition for an injunction for protection against dating violence may be filed in the circuit court by:
  - A person who is the victim of dating violence[5]and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence;
  - A person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence; or
  - The parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.
- A petition for an injunction for protection against sexual violence may be filed in the circuit court by a person who is the victim of sexual violence[6] or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence on his or her own behalf or on behalf of the minor child if:
  - The person has reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or
  - The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.

Section 784.0485, F.S., authorizes a person who is the victim of stalking[7] or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child to file in the circuit court a petition for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking, the offense of stalking includes the offense of cyberstalking.[8]

---

[4] "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(b), F.S.

[5] "Dating violence" is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. This relationship is determined based on specified factors. Section 784.046(1)(d), F.S.

[6] "Sexual violence" means any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

[7] The offense of stalking is committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. Section 784.048(2), F.S.

[8] "Cyberstalk" means: (1) to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or (2) to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that

Legal Standard for a Protective Injunction

The procedures for the issuance of a protective injunction issued under s. 741.30, s. 784.046, or s. 784.0485, F.S., are similar. A person who is the victim of domestic violence or has reasonable cause to believe her or she is in imminent danger of becoming a victim of domestic violence, for example, has standing to file a sworn petition for an injunction.[9] Based on this initial petition, a court may issue a *temporary* injunction ex-parte.[10] During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.[11,12] Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.[13] This ex-parte proceeding is often necessary because "the existence of a true emergency…may sometimes require immediate action that will not permit the movant to verify each allegation made." [14]

Parties to an injunction are entitled to a full hearing, and a temporary injunction is effective for a maximum of 15 days.[15] A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross exam witnesses.[16] Based upon the full hearing, a court "must consider the current allegations, the parties' behavior within the relationship, and the history of the relationship as a whole" to determine if a permanent injunction is warranted based on the petitioner's belief that he or she is in imminent danger of becoming a victim of domestic violence.[17]

Protective Injunctions and the Florida Family Law Rules of Procedure

Rule 12.010 of the Florida Family Law Rules of Procedure states that these rules generally apply to all actions concerning family matters, including injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking.[18] Rule 12.610 of the Florida Family Law Rules of Procedure addresses procedures for injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking.

---

person's permission, causing substantial emotional distress to that person and serving no legitimate purpose. Section 784.048(1)(d), F.S.

[9] Section 741.30(1)(a), F.S.

[10] Section 741.30(5)(c), F.S.

[11] *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (Holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements).

[12] Additionally, when a "parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is *a presumptively sufficient* basis for an injunction." (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).

[13] Section 741.30(5)(b), F.S.

[14] *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).

[15] A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.

[16] *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).

[17] *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).

[18] *See* Florida Family Law Rules of Procedure (Dec. 31, 2020), *available at* https://www-media.floridabar.org/uploads/2020/12/Family-Law-Rules-of-Procedure-12-2020.pdf (last visited March 18, 2021).

Florida Supreme Court Administrative Order on Access to Electronic Court Records

Through administrative rule, the Florida Supreme Court adopted standards for access to electronic court records and an access security matrix.[19] There are different levels of permissible access depending on "the user's role and applicable statutes, court rules, and applicable administrative policy. Access may be restricted to certain user roles based on case type, document type, or information contained within court records."[20]

Permitted access for the general public (without registration agreement) includes:
- All records except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin., or made confidential by court order.
- No remote access to images of records in cases governed by the Florida Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or Florida Probate Rules, pursuant to s. 28.2221(5)(a), F.S.[21]

There are no user security requirements. Anonymous web-based access is permitted.[22]

Clerks of the Court

The Florida Court Clerks and Comptrollers states that a clerk of the court is "designated as the county recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is the Clerk. The Clerk is required to record all such instruments in one general series called 'Official Records,' which must be open to the public for the purpose of inspecting and making extracts of the instruments, under the Clerk's supervision."[23]

Recording of Orders and Judgments (s. 28.29, F.S.)

Section 28.29, F.S., which relates to recording of orders and judgments, in part, requires that orders of dismissal and final judgments of the courts in civil actions be recorded in official records. Other orders must be recorded only on written direction of the court. The direction may be by incorporation in the order of the words "To be recorded" or words to that effect. Failure to record an order or judgment does not affect its validity.

The statute does not specifically refer to final judgments for injunctions for protection.

---

[19] *In Re: Access to Electronic Court Records* (Administrative Order), No. 20-108 (Nov. 20, 2020) and *Standards for Access to Electronic Court Records* (Nov. 2020), Florida Supreme Court, *available at* https://www.floridasupremecourt.org/content/download/693366/7743882 (last visited March 18, 2021).
[20] *Id*.
[21] *Id.*
[22] *Id.*
[23] *FCCC Bill Analysis* (SB 1508) (citations omitted), Florida Court Clerks & Comptrollers (on file with the Senate Committee on Criminal Justice).

III. Effect of Proposed Changes:

"Serena's Law"

The bill provides that the act shall be known as "Serena's Law."

Requirement that County Recorders or Clerks of the Court Provide Certain Information on Protective Injunctions

The bill amends s. 28.2221, F.S., relating to electronic access to official records, to require that each county recorder or clerk of the court make the identity of each defendant or respondent against whom a protective injunction under ss. 741.30, 784.046, or 784.0485, F.S., is entered as well as the fact that such protective injunction has been entered against that defendant or respondent publicly available on an Internet website for general public display, unless the defendant or respondent is a minor.

Information previously described that is not made available by the county recorder or the clerk of the court on a publicly available Internet website for general public display prior to July 1, 2021, must be made publicly available if the affected party identifies the information and requests that it be made publicly available. This request must be in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the case number assigned to the protective injunction. No fee may be charged for the addition of information pursuant to this request.

No later than 30 days after July 1, 2021, notice of the right of any affected party to request the addition of information as previously described must be conspicuously and clearly displayed by the county recorder or clerk of the court on the publicly available Internet website on which images or copies of the county's public records are placed and in the office of each county recorder or clerk of the court.

This notice must contain appropriate instructions for making the addition request in person, by mail, by facsimile, or by electronic transmission. The notice must state, in substantially similar form, that any person has a right to request that a county recorder or clerk of the court add information to a publicly available Internet website if that information involves the identity of a defendant or respondent against whom a protective injunction is entered, unless the defendant or respondent is a minor. This request must be made in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the case number assigned to the protective injunction. No fee will be charged for the addition of a document pursuant to this request.

The bill further provides that any affected person may petition the circuit court for an order directing compliance with this subsection. The recorder or clerk, as applicable, must conspicuously and clearly display on its publicly available website and its office notice of the right of the minor, or his or her representative, to request the addition of such information to the publicly available website.

Recording of Final Judgments for Injunctions for Protection

The bill amends s. 28.29, F.S., relating to recording of orders and judgments to require that final judgments for injunctions for protection as defined in chs. 741 and 784, F.S., be recorded in official records.

The bill also provides that direction regarding recording of orders of dismissals and final judgments referenced in the statute may be by incorporation in the order of the words "To be recorded in official records" or words to that effect.

Effective Date

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Clerk of Court Association states that it anticipates "an increase in labor costs on the court side, as it would be necessary to track the status of petition filings to post notices of injunctions on the Clerks' publicly available websites."[24]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.2221 and 28.29.

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 March 23, 2021:
The committee substitute:
- Removes a provision of the original bill that specified that a public records exemption for certain active criminal intelligence information and active criminal investigative information involving certain victims does not apply to the identity of a person, other than a minor, who is charged with or found guilty of any offense specified in the exemption (most of which are sexual offenses).
- Requires that each county recorder or clerk of the court make the identity of each defendant or respondent against whom a protective injunction is entered as well as the fact that a protective injunction has been entered against that defendant or respondent publicly available on an Internet website for general public display, unless the defendant or respondent is a minor.
- Removes a provision of the bill that required newspaper publication of notices.
- Requires that final judgments for injunctions for protection be recorded in official records.

B. Amendments:

None.

[24] *FCCC Bill Analysis* (SB 1508) (citations omitted), Florida Court Clerks & Comptrollers (on file with the Senate Committee on Criminal Justice).

By the Committee on Criminal Justice; and Senator Book

591-03249-21 20211508c1

A bill to be entitled

An act relating to public records; providing a short title; amending s. 28.2221, F.S.; requiring each county recorder or clerk of the court to make publicly available on an Internet website the identity of a defendant or respondent against whom a protective injunction is entered, as well as the fact that the injunction has been entered; providing an exception; providing for certain persons to request that such information be made available on the public website; requiring county recorders or clerks of the court to post such notices on the website and in the office of each county recorder or clerk of the court; specifying what must be included in notices; authorizing certain persons to petition for compliance in the circuit court; amending s. 28.29, F.S.; requiring that final judgments for injunctions for protection be recorded in official records; providing an effective date.

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

Section 1. This law shall be called "Serena's Law."

Section 2. Subsection (6) is added to section 28.2221, Florida Statutes, to read:

28.2221 Electronic access to official records.—

(6)(a) Each county recorder or clerk of the court must make the identity of each defendant or respondent against whom a protective injunction under s. 741.30, s. 784.046, or s. 784.0485 is entered, as well as the fact that a protective

injunction under s. 741.30, s. 784.046, or s. 784.0485 has been entered against that defendant or respondent, publicly available on an Internet website for general public display, unless the defendant or respondent is a minor.

(b) Any information specified in this subsection not made available by the county recorder or clerk of the court on a publicly available Internet website for general public display before July 1, 2021, must be made publicly available if the affected party identifies the information and requests that it be made publicly available. Such request must be in writing and delivered by mail, facsimile, or electronic transmission or in person to the county recorder or clerk of the court. The request must specify the case number assigned to the protective injunction. A fee may not be charged for the addition of information pursuant to such request.

(c) No later than 30 days after July 1, 2021, notice of the right of any affected party to request the addition of information pursuant to this subsection shall be conspicuously and clearly displayed by the county recorder or clerk of the court on the publicly available Internet website on which images or copies of the county's public records are placed and in the office of each county recorder or clerk of the court. Such notice must contain appropriate instructions for making the addition request in person, by mail, by facsimile, or by electronic transmission. The notice must state, in substantially similar form, that any person has a right to request that a county recorder or clerk of the court add information to a publicly available Internet website if that information involves the identity of a defendant or respondent against whom a protective injunction is entered, unless the defendant or respondent is a minor. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission or in person to the county recorder or clerk of the court. The request must specify the case number assigned to the protective injunction. A fee may not be charged for the addition of a document pursuant to such request.

(d) Any affected person may petition the circuit court for an order directing compliance with this subsection.

Section 3. Section 28.29, Florida Statutes, is amended to read:

28.29 Recording of orders and judgments.—Orders of dismissal and final judgments of the courts in civil actions, including final judgments for injunctions for protection as defined in chapters 741 and 784, must ~~shall~~ be recorded in official records. Other orders must ~~shall~~ be recorded only on written direction of the court. The direction may be by incorporation in the order of the words "To be recorded in official records" or words to that effect. Failure to record an order or judgment does ~~shall~~ not affect its validity. The certified copy of a judgment, required under s. 55.10 to become a lien on real property, shall be recorded only when presented for recording with the statutory service charge.

Section 4. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 23, 2021

I respectfully request that **Senate Bill 1508**, relating to Public Records/Serena's Law, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you for your consideration.

Lauren Book

Senator Lauren Book
Florida Senate, District 32

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1868

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Bean

SUBJECT: Privileged Communications Made to Crime Stoppers Organizations

DATE: March 30, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	**Fav/CS**
2.	Bond	Cibula	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1868 strengthens criminal prohibitions against the misuse or misappropriation of information reported to a crime stoppers organization. Additionally, the bill extends civil and criminal liability protections to persons, including employees, board members, and volunteers of a crime stoppers organization, who use information reported to a crime stoppers organization in the performance of their duties and functions.

Specifically, the bill amends the current third degree felony related to disclosure of privileged communications or protected information of a crime stoppers organization. The offense is expanded to add that a person who attempts to obtain or who obtains privileged communications or protected information commits the offense. The offense is limited by adding that the commission of the offense must be “knowingly and willfully” done. The bill adds that the offense does not apply to a crime stoppers employee, board member, or volunteer acting in the course and scope of the person’s duties or functions. The bill provides that privileged information or communication may only be used to direct a law enforcement investigation.

The bill also provides immunity from civil liability for a person who in the course and scope of his or her duties or functions, receives, forwards, or acts on a privileged communication, unless the act or omission was intentional or grossly negligent.

This bill is effective October 1, 2021.

II. Present Situation:

Crime Stoppers

Crime Stoppers programs are non-profit organizations led by citizens against crime, founded on the concept that someone other than the criminal has information that can help solve a crime. These programs offer anonymity to anyone who can provide information about crimes and subsequently pay rewards when such information leads to an arrest.[1]

The idea of providing a reward to someone having information about a crime originated in Albuquerque, New Mexico, when a detective was tasked with solving a homicide with no leads. He thought to make a video re-enactment of the murder and guarantee anonymity for anyone who was willing to call with information about the crime. After receiving calls following the re-enactment, one of which allowed police to solve a different crime, the detective persuaded the Albuquerque Police Department to permit citizens to establish the first Crime Stoppers program. Today, there are over 1,200 crime stopper organizations throughout the world.[2]

Crime Stoppers in Florida

There are 27 crime stopper programs in Florida that operate collectively under the name Florida Association of Crime Stoppers, Inc. (FACS).[3] In order to expand the model of these programs by providing more stable funding, the Crime Stoppers Trust Fund (Fund) was created for the purpose of grant administration.[4] The Department of Legal Affairs (DLA) administers the Fund and is tasked with establishing criteria for local governments to apply for funding.[5]

In 2019, the Legislature created s. 16.557, F.S., to protect the identity of a person who engages in a privileged communication with a crime stoppers organization.[6] Section 16.557, F.S., provides that a person who discloses a privileged communication or protected information or any information concerning a privileged communication or protected information commits a third degree felony.[7] The offense is unranked on the Offense Severity Ranking Chart.[8] The offense does not apply to:

- The person who provides the privileged communication or protected information;
- A law enforcement officer or an employee of a law enforcement agency or the DLA when he or she is acting within the scope of his or her employment; or
- Criminal discovery.[9]

---

[1] Crime Stoppers USA, *Profile*, available at https://www.crimestoppersusa.org/profile/ (last visited March 15, 2021).
[2] Florida Association of Crime Stoppers, *Where it all started*, available at https://dev.facsflorida.org/where-it-all-started/ (last visited March 15, 2021).
[3] Florida Association of Crime Stoppers, *Our History*, available at https://dev.facsflorida.org/who-we-are/our-history/ (last visited March 15, 2021).
[4] Chapter 1991-205, s. 13, Laws of Fla.
[5] Section 16.555, F.S.
[6] Chapter 2019-167, s. 2, Laws of Fla.
[7] A third degree felony is punishable by up to five years imprisonment, a $5,000 fine, or enhanced penalties as a habitual felony offender. Sections 775.082, 775.083, and 775.084, F.S.
[8] Section 921.0022, F.S. An unranked third degree felony defaults to be a Level 1 offense. Section 921.0023(1), F.S.
[9] Section 16.557(2), F.S.

Section 16.557, F.S., provides the following definitions:

- "Crime stoppers organization," means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity, and forwards that information to appropriate law enforcement agencies.[10]
- "Privileged communication," means the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.[11]
- "Protected information," includes the identity of a person who engages in privileged communication with a crime stoppers organization and any records, recordings, oral or written statements, papers, documents, or other tangible items provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.[12]

Crime Stoppers Trust Fund

The amount of funding available for a crime stoppers organization or a county is based upon all money deposited pursuant to s. 938.06, F.S., available unused funds, the DLA's spending authority, and money collected pursuant to financial consequences.[13]

Section 938.06, F.S., provides that, in addition to other fines that may be imposed, a court must assess a $20 fee for any person convicted of any criminal offense. The proceeds, less $3 per assessment, must be deposited into the Fund.[14] Such proceeds are placed in a separate account in the Fund and are designated according to the judicial circuit in which they were collected.[15] A county may apply to the DLA for a grant from the funds collected in the judicial circuit in which the county is located. However, such grants are awarded only to counties that are served by an organization that is an official member of the FACS and in good standing.[16]

Money awarded from a grant to a county may only be used to support the FACS and its crime fighting programs.[17] Only one crime stoppers program per county is eligible to receive funding. To be eligible to receive funds, a program must:

- Be a 501(c)(3) non-profit organization.
- Have endorsement from the county commission in the county they serve.
- Be a member in good standing of the FACS.[18]

Eligible programs must complete and submit a performance-based grant proposal outlining its annual operational plan, along with a budget based upon the certified funds previously authorized by the Florida Office of the Attorney General.[19] A county that is awarded a grant may

---

[10] Section 16.557(1)(a), F.S.
[11] Section 16.557(1)(b), F.S.
[12] Section 16.557(1)(c), F.S.
[13] Fla. Admin. Code. R. 2A-9.003(2).
[14] Section 938.06(1) and (2), F.S.
[15] Section 16.555(4)(b), F.S.
[16] Section 15.555(5)(b), F.S.
[17] *Id.*
[18] Florida Association of Crime Stoppers, *Funding*, available at https://dev.facsflorida.org/who-we-are/62-2/ (last visited March 15, 2021).
[19] *Id.*

use such funds to purchase items to assist in educating the public and increasing public awareness of FACS,[20] fund student crime watch programs,[21] or used to reimburse programs for the payment of rewards.[22] In order to obtain reimbursement from the Fund, the reward paid must have been for:

- An arrest.
- The recovery of stolen property.
- The recovery of illegal narcotics.
- The recovery of the body of a homicide victim.
- The recovery of a human trafficking victim or missing person connected to criminal activity.
- The recovery of an illegal firearm or an illegal weapon on a K-12 school campus.
- The prevention of a terrorist act.
- The solving and closing of a criminal case involving a homicide or other violent felony offense that remains unsolved for 1 year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.[23]

Crime Stoppers Privileged Communication in Other States

Other states have implemented laws that both protect the identity of a person who provides a tip to a crime stoppers organization and provide that the communication of the tip and any documents created as a result of the tip are privileged. Some of those states include: Arkansas,[24] Colorado,[25] Connecticut,[26] Kentucky,[27] Louisiana,[28] Michigan,[29] Mississippi,[30] New Mexico,[31] Oklahoma,[32] and Texas.[33]

Additionally, some states have created criminal penalties for the prohibited disclosure of such protected information. These states include: Arkansas,[34] Colorado,[35] Kentucky,[36] Mississippi,[37]

---

[20] Section 16.555(5)(c), F.S.
[21] Section 16.555(5)(d), F.S.
[22] Section 16.555(5)(e), F.S.
[23] Section 16.555(5)(e)1.-8., F.S.
[24] Section 16-90-1005, A.C.A.
[25] Section 16-15.7-104, C.R.S.A.
[26] Section 29-1d., C.G.S.A.
[27] Section 431.580, K.R.S.
[28] Section 15:477.1, L.A.R.S.
[29] Section 600.2157b, M.C.L.A.
[30] Section 45-39-7, M.C.A
[31] Section 29-12A-4, N.M.S.A.
[32] Section 2510.1, O.S.A.
[33] Sections 414.008 and 414.009, V.T.C.A.
[34] Section 16-90-1006, A.C.A
[35] Section 16-15.7-104, C.R.S.A.
[36] Section 431.585, K.R.S.
[37] Section 45-39-9, M.C.A.

New Mexico,[38] and Texas.[39] The criminal penalty is generally a misdemeanor,[40] rather than a felony.[41]

Privileged Communications in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.[42] The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.[43] Privileged communication is used to describe an interaction between two parties in which the law recognizes a private, protected relationship.[44] Some examples of generally privileged communications include communications between a lawyer and client;[45] a husband and wife;[46] and a psychotherapist and a patient.[47]

Typically, such communication only loses its privileged status if the person who made the original disclosure of such information waives the privilege, thus permitting the communication to be subject to general rules of evidence. A person is deemed to have waived the privilege if he or she voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to the disclosure of any significant part of the communication.[48]

Tort Law - In General

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.[49] When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.[50]

---

[38] Section 29-12A-5, N.M.S.A

[39] Section 414.009, V.T.C.A

[40] A misdemeanor is punishable by one year or less in jail, while a felony is punishable by more than a year in state prison. Section 775.082, F.S.

[41] Of the states listed, the exception to the offense being classified as a misdemeanor is in Texas where the offense is a felony if the person divulged the information for the purposes of obtaining a monetary benefit. *See* s. 414.009, V.T.C.A.

[42] Chapter 90, F.S.

[43] US Legal, *Privileged Communications Law and Legal Definition*, available at https://definitions.uslegal.com/p/privileged-communications/ (last visited March 15, 2021).

[44] Will Kenton, Investopedia, *Privileged Communication*, (December 1, 2020), available at https://www.investopedia.com/terms/p/privileged-communication.asp (last visited March 15, 2021).

[45] Section 90.502, F.S.

[46] Section 90.504, F.S.

[47] Section 90.503, F.S.

[48] Section 90.507, F.S.

[49] BLACK'S LAW DICTIONARY (11th ed. 2019).

[50] Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.[51]

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:
- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and
- Damages – That the plaintiff suffered actual harm or loss.

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence:

Slight Negligence
Slight negligence is generally defined to mean the failure to exercise a great amount of care.[52]

Ordinary Negligence
Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.[53]

Gross Negligence and Intentional Misconduct
Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a "reasonably prudent person knows will probably and most likely result in injury to another" person.[54] In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:
- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.[55]

Intentional misconduct means that the defendant had actual knowledge of the wrongfulness of the conduct, that there was a high probability of injury or damage to the claimant and, despite that knowledge, the defendant intentionally pursued that course of conduct, resulting in injury or damage.[56]

---

[51] Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.
[52] Sawaya, Thomas, 6 Fla. Prac., *Personal Injury & Practice With Wrongful Death Actions* § 1:2 – *Degrees of Negligence* (2020-2021 ed.).
[53] *Id*.
[54] *Id*.
[55] *Id*. Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.
[56] Fla. Std. Jury Instr. 503.1, *Punitive Damages - Bifurcated Procedure*.

III. Effect of Proposed Changes:

The bill amends s. 16.557, F.S., to provide that a person who knowingly and willfully attempts to obtain, obtains, or discloses privileged communications or protected information of a crime stoppers organization commits a third degree felony. Section 16.557, F.S., currently provides that only the person who discloses such information commits a third degree felony.

Currently, the offense of disclosure of such information does not apply to certain people. This bill adds that the offense does not apply to an employee, board member, or volunteer of a crime stoppers organization while acting in the course and scope of the person's duties or functions.

The bill provides that information obtained from an anonymous source contained in a crime stoppers organization records:

- May not be considered for probable cause to issue an arrest warrant or search warrant.
- Is not admissible or subject to discovery in civil or criminal court.
- May only be used to direct a law enforcement investigation.

The bill also provides that a person who, in the course and scope of his or her duties or functions, receives, forwards, or acts on a privileged communication, is immune from civil liability damages resulting from an act or omission in the performance of such duties or functions unless the act or omission was intentional or grossly negligent.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 1 of the bill, in part, amends an existing felony offense. Those changes may result in indeterminate local fund expenditures for costs relating to criminal prosecution and confinement if a jail sentence is imposed. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law and are thus exempt from the requirements of article VII, section 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed CS/CS/SB 1868. The bill changes a felony offense related to privileged communications or protected information of a crime stoppers organization. To the extent that this provision may result in additional offenders being convicted for this felony offense, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 16.557 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 Judiciary on March 29, 2021:
The committee substitute removes requirements that a crime stoppers organization respond to criminal discovery, and adds that confidential information held by a crime stoppers organization is not admissible in court and may only be used to steer a law enforcement investigation.

CS by Criminal Justice on March 23, 2021:
The committee substitute:
- Provides that a person who knowingly and willfully attempts to obtain, obtains, or discloses a privileged communication, or protected information, or any information concerning a privileged communication or protected information commits a third degree felony.
- Provides that a person who is acting in the course and scope of his or her employment and receives, forwards, or acts on such communication is immune from civil liability unless the act or omission was intentional or grossly negligent.
- Removes language that provided that evidence of such communication may not be relied upon, or considered in determining whether probable cause exists to issue a warrant, or that evidence of such communication is admissible or subject to discovery in any court.

B. Amendments:

None.

709580

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 56 - 64
and insert:

~~(c) This subsection does not limit the right of any criminal defendant to criminal discovery.~~

(3) A person in the course and scope of his or her duties or functions who receives, forwards, or acts on a privileged communication is immune from civil liability for damages resulting from an act or omission in the performance of his or her duties or functions unless the act or omission was

709580

intentional or grossly negligent.

(4)(a) Evidence of a privileged communication, and information contained within a privileged communication, from an anonymous source to a crime stoppers organization may not be:

1. Relied upon, or considered in determining whether probable cause exists to issue either an arrest or search warrant.

2. Admissible or subject to discovery in any court proceeding.

(b) A privileged communication may only be used to assist a law enforcement agency in directing an investigation of alleged criminal activity.

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

And the title is amended as follows:

Delete line 13

and insert:

communications; limiting the uses of privileged communications or evidence of such communications; providing an effective date.

By the Committee on Criminal Justice; and Senator Bean

A bill to be entitled

An act relating to privileged communications made to crime stoppers organizations; amending s. 16.557, F.S.; prohibiting a person from knowingly and willfully attempting to obtain, obtaining, or disclosing a privileged communication or protected information; providing a penalty; providing an exemption from criminal liability for employees, board members, or volunteers of a crime stoppers organization in certain circumstances; providing immunity from civil liability for certain actions by specified persons concerning privileged communications; providing an effective date.

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

Section 1. Section 16.557, Florida Statutes, is amended to read:

16.557 Crime stoppers organizations; disclosure of privileged communications or protected information; civil immunity; use.—

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

(a) “Crime stoppers organization” means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity, and forwards that information to appropriate law enforcement agencies.

(b) “Privileged communication” means the act of providing information to a crime stoppers organization for the purpose of

reporting alleged criminal activity.

(c) “Protected information” includes the identity of a person who engages in privileged communication with a crime stoppers organization and any records, recordings, oral or written statements, papers, documents, or other tangible items provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.

(2)(a) Except ~~pursuant to criminal discovery or~~ as provided in paragraph (b), a person who knowingly and willfully attempts to obtain, obtains, or discloses a privileged communication or protected information, or any information concerning a privileged communication or protected information, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to:

1. The person who provides the privileged communication or protected information; ~~or~~

2. An employee, board member, or volunteer of a crime stoppers organization while acting in the course and scope of the person’s duties or functions;

3.~~2.~~ A law enforcement officer or an employee of a law enforcement agency or the Department of Legal Affairs when he or she is acting within the scope of his or her official duties; or~~.~~

4. A person complying with criminal discovery rules.

(c) This subsection does not limit the right of any criminal defendant to criminal discovery.

591-03239-21 20211868c1

(3) A person in the course and scope of his or her duties or functions who receives, forwards, or acts on a privileged communication is immune from civil liability for damages resulting from an act or omission in the performance of his or her duties or functions unless the act or omission was intentional or grossly negligent.

Section 2. This act shall take effect October 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 22, 2021

I respectfully request that **Senate Bill #1868**, relating to Privileged Communications Made to Crime Stoppers Organizations, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) CS/SB 1868

Meeting Date

Bill Number (if applicable)

Topic Privileged Communications to Crime

Amendment Barcode (if applicable)

Name David Serdar Stopper

Job Title

Address 66 Wintergreen Dr
Street

Fruitland Park Fl 34731
City State Zip

Phone 3528056597

Email gottendave1955@gmail.com

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

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

Representing Self Statesman / Sheriffs P.D. Chiefs Contact

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 Judiciary

BILL:	CS/SB 386
INTRODUCER:	Judiciary Committee and Senator Wright
SUBJECT:	Payments to Clerks of the Circuit Courts
DATE:	March 30, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 386 authorizes a trial court, when determining the reasonableness of a payment plan, to waive or modify the amount due, or convert part or all of the amount due to community service, upon a finding that the person is indigent or a finding of compelling circumstances.

The bill also provides that a certain portion of traffic fines that the state currently gives to municipalities will be directed instead to the fine and forfeiture fund of the county where the offense occurred, benefiting the clerks of court.

The fiscal impact of the portion allowing a court to modify or waive monies due is indeterminate. The redirection of fines revenue will shift approximately $9.4 million annually from municipalities to clerks of court.

The bill is effective July 1, 2021.

II. Present Situation:

Clerks of the Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court[1] to serve as both the clerk of court, completing

---

[1] FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

judiciary functions, and as the "*ex officio*[2] clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."[3] The traditional role of the clerk in collecting fines and fees owed to the county has been expanded to collecting the numerous state fines, fees, and charges that are related to the court system.

Payment Plans with a Clerk of the Court

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Section 28.246(4), F.S., authorizes a clerk to accept partial payments and to enter into payment plans with individuals who owe court-related fines or other monetary penalties, fees, charges and costs. Section 57.082(6), F.S., similarly authorizes a clerk to enter into a payment plan with a party who qualifies for civil indigent status and who owes reimbursement to the clerk. Both statutes require that a payment plan limit payments to those within the individual's ability to pay. Under either statute, monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.[4] The 2 percent limitation is calculated on a per-case basis. The clerk may elect whether to charge a $5 processing fee for every partial payment or a one-time $25 fee for setting up a payment plan.[5]

Current law is silent on which forms of payment a clerk must accept. Section 215.322, F.S., allows, but does not require, state and local governments to accept electronic payments. A clerk of court is allowed to surcharge the person who uses a credit card, charge card, bank debit card, or electronic funds transfer in payment of fines, civil penalties, court-ordered payments, or court costs, or other statutorily prescribed revenues an amount sufficient to pay the service fee charges by the financial institution or credit card company for such services.

The court may review the reasonableness of any payment plan.

Court-Related Fines, Penalties, Costs, and Fees Owed

As to any civil penalty for a noncriminal traffic infraction, the court may allow the driver to satisfy the civil penalty by participating in community service until the civil penalty is paid. To qualify, the driver must show "demonstrable financial hardship."[6]

As to any financial obligation owed in any criminal case, the trial court may convert the statutory financial obligation into community service upon a finding that the offender has an "inability to

---

[2] *See* BLACK'S LAW DICTIONARY (10th ed. 2014) ("*ex officio*" means "By virtue or because of an office; by virtue of the authority implied by office.").

[3] FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*

[4] An unmarried individual earning the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deduction would pay no more than $26.80 a month on a clerk's payment plan.

[5] Section 28.24(26), F.S.

[6] Section 318.18(8)(b)1.a., F.S.

pay" the obligation.[7] The criminal court may convert any financial obligation to a civil judgment.[8]

Distribution of Traffic Fines

Monies collected from traffic fines are distributed among numerous state and local funds. The distribution of 56.4 percent of such fines collected is based on the location where the infraction occurred. If the infraction occurs in a municipality, the state gives 50.8 percent of the fine to the municipality, and gives the other 5.6 percent to the fine and forfeiture fund of the county. If the infraction occurs in the unincorporated area of the county, the state gives the entire 56.4 percent collected to the fine and forfeiture fund of the county.[9] A fine and forfeiture fund is established in each county with the clerk of the court,[10] and is currently used to, in part, fund the clerks of court in performing court-related functions.

The current distributions between municipalities, counties, and clerks of court has been in place since 2004.[11] Prior to 2003, the state gave both counties and municipalities 56.4 percent of traffic fines for offenses committed within their respective jurisdictions.[12]

III. Effect of Proposed Changes:

Payment Plans with a Clerk of the Court

The bill amends s. 28.246(4), F.S., to create a $10 minimum payment on a payment plan with a clerk of court.[13]

In determining the reasonableness of a payment plan, the bill gives the trial court the power, on its own motion or by petition, to waive, modify, or convert the outstanding fines, fees, costs, or service charges to community service if the court determines that the individual is indigent or, due to compelling circumstances, is unable to comply with the terms of the payment plan. The terms "indigent" and "compelling circumstances" are not defined and thus left to the discretion of the trial court.

Distribution of Traffic Fines

The bill matches the state grant of the distribution of monies collected from traffic fines that occur within a municipality with the current distribution regarding an offense in the unincorporated areas of a county. Accordingly, whether a traffic offense occurs in a municipality or in the unincorporated part of the county, the bill provides that the state gives the same 56.4 percent of the fine collected to the fine and forfeiture fund of the county.

The bill is effective July 1, 2021.

---

[7] Section 938.30(2), F.S.
[8] Section 938.30(6), F.S.
[9] Section 318.21(2)(g), F.S.
[10] Section 142.01, F.S.
[11] Chapter 2004-265, s. 61, Laws of Fla.
[12] Chapter 2003-402, s. 100, Laws of Fla.
[13] The $10 minimum payment would only impact a person earning less than $500 a month net.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared tax revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 19, 2021, the Revenue Estimating Impact Conference evaluated CS/SB 386 and said this about the portion of the bill regarding waiver and modification of outstanding fines, fees, costs and other court-ordered charges:

> The language which allows the court to waive or modify the remaining financial obligations would likely have a negative impact on the collection of outstanding balances; however, uncertainty with the amount of outstanding balances to be waived and discretion of the courts to waive or modify amounts inhibits the ability to assign a specific number on this impact.[14]

[14] Office of Economic and Demographic Research, Revenue Estimating Impact Conference, page 197.

The portion of the bill altering the distribution of traffic fines is estimated to reduce fines revenue transferred to the state's 411 municipalities by a total of approximately $9.4 million annually, with a corresponding increase in revenues to the 67 clerks of court.[15]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.246 and 318.21.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 29, 2021:
The committee substitute removed from the bill changes to payment plans other than the provision allowing a court, when reviewing the reasonableness of a payment plan, to convert some or all of the obligation to community service, or modify or waive the balance. The committee substitute also removed from the bill provisions that would limit driver license suspension for a criminal offense that was not driving-related and would allow reinstatement of those currently suspended for non-driving-related offenses. The committee substitute added a provision redirecting traffic fines for offenses committed within a municipality.

B. Amendments:

None.

[15] E-mail correspondence from the Florida Clerk of Courts Operations Corporation, March 29, 2021 (on file with the Senate Judiciary Committee).

407108

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/29/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (g) of subsection (2) of section 318.21, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

318.21 Disposition of civil penalties by county courts.—All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

407108

(1) One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund for child welfare training purposes pursuant to s. 402.40. One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Juvenile Justice Training Trust Fund for juvenile justice purposes pursuant to s. 985.66.

(2) Of the remainder:

(g)1. If the violation occurred within a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe, 56.4 percent shall be paid to that special improvement district.

2. ~~If the violation occurred within a municipality, 50.8 percent shall be paid to that municipality and 5.6 percent shall be deposited into the fine and forfeiture trust fund established pursuant to s. 142.01.~~

~~3.~~ If the violation occurred within a municipality or within the unincorporated area of a county, including the unincorporated areas, if any, of a government created pursuant to s. 6(e), Art. VIII of the State Constitution, that is not within a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe, 56.4 percent shall be deposited into the fine and forfeiture fund established pursuant to s. 142.01.

Section 2. This act shall take effect July 1, 2021.

================= 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

407108

and insert:

A bill to be entitled

An act relating to disposition of civil penalties by county courts; amending s. 318.21, F.S.; revising the distribution of civil penalties received by a county court; providing an effective date.

547058

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Substitute for Amendment (407108) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4) The clerk of the circuit court shall accept partial

payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person’s ability to pay if the amount does not exceed 2 percent of the person’s annual net income, as defined in s. 27.52(1), divided by 12 or $10, whichever is greater. The court may review the reasonableness of the payment plan and may, on its own motion or by petition, waive, modify, or convert the outstanding fees, costs, or service charges to community service if the court determines that the individual is indigent or, due to compelling circumstances, is unable to comply with the terms of the payment plan.

Section 2. Paragraph (g) of subsection (2) of section 318.21, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

318.21 Disposition of civil penalties by county courts.—All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(1) One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund for child welfare training purposes pursuant to s. 402.40. One dollar from every civil penalty shall be

547058

remitted to the Department of Revenue for deposit into the Juvenile Justice Training Trust Fund for juvenile justice purposes pursuant to s. 985.66.

(2) Of the remainder:

(g)1. If the violation occurred within a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe, 56.4 percent shall be paid to that special improvement district.

2. ~~If the violation occurred within a municipality, 50.8 percent shall be paid to that municipality and 5.6 percent shall be deposited into the fine and forfeiture trust fund established pursuant to s. 142.01.~~

~~3.~~ If the violation occurred within a municipality or within the unincorporated area of a county, including the unincorporated areas, if any, of a government created pursuant to s. 6(e), Art. VIII of the State Constitution, that is not within a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe, 56.4 percent shall be deposited into the fine and forfeiture fund established pursuant to s. 142.01.

Section 3. This act shall take effect July 1, 2021.

================= 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 courts; amending s. 28.246, F.S.; revising a presumption regarding a monthly payment amount; authorizing a court to waive, modify, and convert certain fees, costs, and service charges into community service under specified circumstances; amending s. 318.21, F.S.; revising the disposition of civil penalties received by a county court; providing an effective date.

By Senator Wright

A bill to be entitled

An act relating to payments to clerks of the circuit courts; amending s. 27.52, F.S.; conforming a cross-reference; amending s. 28.24, F.S.; providing procedures for payment plans; amending s. 28.246, F.S.; revising the methods by which clerks of the circuit courts must accept payments for certain fees, charges, costs, and fines; providing requirements for entering into payment plans; authorizing a court to waive, modify, and convert certain fines and fees into community service under specified circumstances; authorizing the clerks of court to send specified notices relating to payment plans; authorizing the clerks of court to waive certain fees for individuals who enroll in automatic electronic debit payment plans; amending s. 28.42, F.S.; requiring the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, to develop a uniform payment plan form by a specified date; providing minimum criteria for the form; requiring clerks of court to use such forms by a specified date; amending s. 57.082, F.S.; conforming a cross-reference and provisions to changes made by the act; amending s. 318.15, F.S.; authorizing, rather than requiring, clerks of court to notify the Department of Highway Safety and Motor Vehicles under certain circumstances; extending the timeframe for issuing certain notices; amending s. 318.20, F.S.; requiring that a notification form and the uniform traffic citation

include certain information about paying a civil penalty; amending s. 322.245, F.S.; authorizing certain persons to apply for reinstatement of their suspended licenses under certain circumstances; providing an effective date.

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

Section 1. Paragraph (i) of subsection (5) of section 27.52, Florida Statutes, is amended to read:

27.52 Determination of indigent status.—

(5) INDIGENT FOR COSTS.—A person who is eligible to be represented by a public defender under s. 27.51 but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court or on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(i) A defendant who is found guilty of a criminal act by a court or jury or enters a plea of guilty or nolo contendere and who received due process services after being found indigent for costs under this subsection is liable for payment of due process costs expended by the state.

1. The attorney representing the defendant, or the defendant if he or she is proceeding pro se, shall provide an accounting to the court delineating all costs paid or to be paid by the state within 90 days after disposition of the case notwithstanding any appeals.

2. The court shall issue an order determining the amount of all costs paid by the state and any costs for which prepayment was waived under this section or s. 57.081. The clerk shall cause a certified copy of the order to be recorded in the official records of the county, at no cost. The recording constitutes a lien against the person in favor of the state in the county in which the order is recorded. The lien may be enforced in the same manner prescribed in s. 938.29.

3. If the attorney or the pro se defendant fails to provide a complete accounting of costs expended by the state and consequently costs are omitted from the lien, the attorney or pro se defendant may not receive reimbursement or any other form of direct or indirect payment for those costs if the state has not paid the costs. The attorney or pro se defendant shall repay the state for those costs if the state has already paid the costs. The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-time administrative processing charge under s. 28.24(26)(b) ~~s. 28.24(26)(c)~~.

Section 2. Subsection (26) of section 28.24, Florida Statutes, is amended to read:

28.24 Service charges.—The clerk of the circuit court shall charge for services rendered manually or electronically by the clerk’s office in recording documents and instruments and in performing other specified duties. These charges may not exceed those specified in this section, except as provided in s. 28.345.

(26)(a) For receiving and disbursing all restitution payments, per payment: 3.50, from which the clerk shall remit

0.50 per payment to the Department of Revenue for deposit into the General Revenue Fund.

(b) ~~For receiving and disbursing all partial payments, other than restitution payments, for which an administrative processing service charge is not imposed pursuant to s. 28.246, per month...5.00~~

~~(c)~~ For setting up a payment plan, a one-time administrative processing charge of ~~in lieu of a per month charge under paragraph (b)~~.................................25.00.

(c) A person may pay the one-time administrative processing charge in paragraph (b) in no more than five equal monthly payments.

Section 3. Subsections (4) and (5) of section 28.246, Florida Statutes, are amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4) Each ~~The~~ clerk of the circuit court shall accept scheduled partial payments for court-related fees, service charges, costs, and fines electronically, by mail, or in person, in accordance with the terms of an established payment plan and enroll~~.~~ an individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law no later than 30 calendar days after the date the court enters the order assessing any such fees, service charges, costs, and fines. If the individual is incarcerated, the individual shall apply to the clerk for enrollment in a payment plan within 30 calendar days after release. The clerk of court may not refer a case to

collection or send notice to the department to suspend an individual's driver license for nonpayment or failure to comply with the terms of a payment plan if the individual is still incarcerated. The clerk shall enroll individuals with a deposit or credit card account, or with other means of automatic withdrawal, in an automatic payment plan arrangement to ensure timely payment under the plan. Each clerk shall work with the court to develop a process in which the individual will meet with the clerk upon disposition or as soon thereafter as practicable. If the clerk enters ~~shall enter~~ into a payment plan with an individual who the court determines is indigent for costs, the~~. A~~ monthly payment amount shall be~~,~~ calculated based upon all fees and all anticipated fees, service charges, costs, and fines owed within the county, and ~~is presumed to~~ correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12 or $10, whichever is greater. The court may review the reasonableness of the payment plan and may, on its own motion or by petition, waive, modify, or convert the outstanding fines, fees, costs, or service charges to community service if the court determines that the individual is indigent or, due to compelling circumstances, is unable to comply with the terms of the payment plan.

(5)(a) The clerk may send notices, electronically or by mail, to remind an individual of an upcoming or missed payment.

(b) When receiving partial payment of fees, service charges, court costs, and fines, clerks shall distribute funds according to the following order of priority:

1.~~(a)~~ That portion of fees, service charges, court costs,

and fines to be remitted to the state for deposit into the General Revenue Fund.

2.~~(b)~~ That portion of fees, service charges, court costs, and fines required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Department of Revenue.

3.~~(c)~~ That portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

4.~~(d)~~ That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose ~~either a per-month service charge pursuant to s. 28.24(26)(b) or~~ a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(26)(b) ~~s. 28.24(26)(c)~~. The clerk of court may waive this fee for any individual who enrolls in an automatic electronic debit payment plan.

Section 4. Section 28.42, Florida Statutes, is amended to read:

28.42 Manual of filing fees, charges, costs, and fines; uniform payment plan forms.—

(1) The clerks of court, through their association and in

consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2021, the clerks of court, through their association, in consultation with the Florida Clerks of Court Operations Corporation, shall develop a uniform payment plan form for use by individuals seeking to establish a payment plan in accordance with s. 28.246. The form shall inform the individual about the minimum payment due each month, the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for nonpayment.

(3) By January 1, 2022, each clerk of the court shall use the uniform payment plan form described in subsection (2) when establishing payment plans.

Section 5. Subsection (6) of section 57.082, Florida Statutes, is amended to read:

57.082 Determination of civil indigent status.—

(6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the clerk or the court determines is indigent for civil proceedings

under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(26)(b) ~~s. 28.24(26)(c)~~. A monthly payment amount must be~~,~~ calculated based upon all fines and fees and all anticipated costs owed within that county and must~~, is presumed to~~ correspond to the person’s ability to pay. The monthly payment plan amount must be the greater of $10 or ~~if it does not exceed~~ 2 percent of the person’s annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk’s decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.

Section 6. Paragraph (a) of subsection (1) of section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(1)(a) If a person who is not incarcerated fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with ss. 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court may ~~shall~~ notify the Department of Highway Safety and Motor Vehicles of such failure within 30

~~10~~ days after such failure, except as provided in paragraphs (b) and (c). Upon receipt of such notice, the department shall immediately issue an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside Florida, shall remain on the records of the department for a period of 7 years from the date imposed and shall be removed from the records after the expiration of 7 years from the date it is imposed. The department may not accept the resubmission of such suspension.

Section 7. Section 318.20, Florida Statutes, is amended to read:

318.20 Notification; duties of department.—The department shall prepare a notification form to be appended to, or incorporated as a part of, the Florida uniform traffic citation issued in accordance with s. 316.650. The notification form shall contain language informing persons charged with infractions to which this chapter applies of the procedures available to them under this chapter. Such notification shall contain a statement that, if the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties which have been paid shall be returned. A uniform traffic citation that is produced electronically must also include the information required by this section. The notification and the uniform traffic citation must include information on paying the civil penalty to the clerk of the court and information that the person may contact

the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for court-related fines, fees, costs, and service charges.

Section 8. Section 322.245, Florida Statutes, is amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other driving-related criminal case.—

(1) If a person charged with a violation of any driving-related ~~of the~~ criminal offenses enumerated in s. 318.17 or with the commission of any driving-related offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court, within the time allotted by the court, the clerk of the traffic court shall mail to the person, at the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to $25 to the clerk, from which the clerk shall remit $10 to the Department of Revenue for deposit into the General Revenue Fund, his or her driver license will be suspended. The notice shall be mailed no later than 5 days after such failure. The delinquency fee may be retained by the office of the clerk to defray the operating costs of the office.

(2) In non-IV-D cases, if a person fails to pay child support under chapter 61 and the obligee so requests, the

depository or the clerk of the court shall mail in accordance with s. 61.13016 the notice specified in that section, notifying him or her that if he or she does not comply with the requirements of that section and pay a delinquency fee of $25 to the depository or the clerk, his or her driver license and motor vehicle registration will be suspended. The delinquency fee may be retained by the depository or the office of the clerk to defray the operating costs of the office after the clerk remits $15 to the Department of Revenue for deposit into the General Revenue Fund.

(3) If the person fails to comply with the directives of the court within the 30-day period, or, in non-IV-D cases, fails to comply with the requirements of s. 61.13016 within the period specified in that statute, the depository or the clerk of the court shall electronically notify the department of such failure within 10 days. Upon electronic receipt of the notice, the department shall immediately issue an order suspending the person's driver license and privilege to drive effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6).

(4) After suspension of the driver license of a person pursuant to subsection (1), subsection (2), or subsection (3), the license may not be reinstated until the person complies with all court directives imposed upon him or her, including payment of the delinquency fee imposed by subsection (1), and presents certification of such compliance to a driver licensing office and complies with the requirements of this chapter or, in the case of a license suspended for nonpayment of child support in non-IV-D cases, until the person complies with the reinstatement

provisions of s. 322.058 and makes payment of the delinquency fee imposed by subsection (2).

(5)(a) A person whose driver license was suspended before July 1, 2021, pursuant to this section solely for the nonpayment of fines, fees, or costs in a criminal case not involving operation of a motor vehicle, if otherwise eligible, may apply to have his or her license reinstated upon payment of a reinstatement fee.

(b) When the department receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to pay financial obligations, in full or in part under a payment plan established pursuant to s. 28.246(4), for any criminal offense involving operation of a motor vehicle by the person licensed ~~other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4)~~, the department shall suspend the license of the person named in the notice.

(c) ~~(b)~~ The department must reinstate the driving privilege when the clerk of the court provides an affidavit to the department stating that:

1. The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;

2. The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or

3. A court has entered an order granting relief to the person ordering the reinstatement of the license.

(d) ~~(c)~~ The department shall not be held liable for any license suspension resulting from the discharge of its duties

14-00253B-21 2021386__

under this section.

Section 9. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Finance and Tax
Transportation

SENATOR TOM A. WRIGHT
14th District

January 12, 2021

The Honorable Jeff Brandes
414, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 386 – Payments to Clerks of the Circuit Courts

Dear Chair Brandes:

Senate Bill 386, relating to Payments to Clerks of the Circuit Courts has been referred to the Committee on Judiciary. I am requesting your consideration on placing SB 386 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright, District 14

cc: Tom Cibula, Staff Director of the Committee on Judiciary
Joyce Butler, Administrative Assistant of the Committee on Judiciary

REPLY TO:
☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
☐ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

Duplicate

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

SB 386
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payments to Clerks of the Circuit Court

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.
Street

Phone 850-681-0024

Tallahassee FL 32301
City State Zip

Email jorge@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing New Venture Fund

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)

3/29/21
Meeting Date

386
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fines & Fees

Name Carrie Boyd

Job Title Policy Director

Address P.O. Box 10788
Street

Tallahassee FL 32302
City State Zip

Phone 850 570 9560

Email carrie.boyd@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Judi 3:30

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

SB 386
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payments to Clerks of the Circuit Courts

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
Street

Tallahassee | FL | 32301
City | State | Zip

Phone 224-7173

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associcated 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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 386

3/29/21
Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 386

Name Samite Tirmat

Job Title Chainless Change Legal Advocate

Address 746 NE 3rd Avenue
Street

Phone 954-709-9253

Fort Lauderdale FL 33304
City State Zip

Email Samite@chainlesschange.org

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

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

Representing Chainless Change

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

03/29/21
Meeting Date

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

SB 386
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 386

Name Kristen Torres

Job Title Community Organizer@Chainless Change

Address 746 NE 3rd Ave
Street

Phone 954-395-2961

Fort Lauderdale FL 33304
City State Zip

Email Kris@chainlesschange.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Chainless Change

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)

Duplicate

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021
Meeting Date

386
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payment to Clerks of Circuit Courts

Name Pamela Burch Fort

Job Title

Address 104 South Monroe Street
Street

Tallahassee FL 32301
City State Zip

Phone 850-425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU of Florida and NAACP Florida State Conference

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.

S-001 (10/14/14)

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 1992
INTRODUCER:	Senator Harrell
SUBJECT:	Solicitation of Nonmedical Services
DATE:	March 26, 2021 REVISED: 03/29/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Favorable**
2.	Davis	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 1992 defines what a deceptive and unfair trade practice act is when it involves a paid solicitation for nonmedical professional services, including legal services, regarding a drug or medical device.

The bill creates s. 501.2106, F.S., which provides that it is a deceptive and unfair trade practice for a person to submit or approve the submittal of a solicitation for nonmedical professional services for publication, broadcast, or dissemination, or to pay for or otherwise sponsor a nonmedical solicitation if the solicitation meets or fails to meet specified criteria, including the following:

- Fails to clearly disclose the phrase, "this is a paid advertisement for nonmedical services" at the outset of the solicitation;
- Includes terminology implying that the advertisement is a public alert or announcement;
- Displays a logo in a manner implying affiliation with a governmental agency;
- Includes terminology implying that the product has been recalled when it has not been recalled;
- Fails to clearly disclose who the sponsor is of the advertisement;
- Fails to clearly disclose the individual or entity that will provide professional services to the person who responds to the advertisement; or
- Fails to include any additional required disclosures.

The bill also creates s. 877.025, F.S., which provides that a person who solicits professional services may not use, cause to be used, obtain, sell, transfer, or disclose to another person an individual's protected health information, without the individual's written authorization. The bill provides first degree misdemeanor and a second degree felony penalties for these violations, depending on the circumstances, and subjects the perpetrator to the penalties and remedies of the Deceptive and Unfair Trade Practices Act.

Except as otherwise provided, the bill takes effect July 1, 2021.

II. Present Situation:

Attorney Advertising Seeking Plaintiffs against Pharmaceutical Companies

The television advertisements that attorneys use to find personal injury clients has generated concerns at the federal level. In 2019, the Federal Trade Commission (FTC) contacted seven law firms and lead generating companies to express concerns that some of their "television advertisements that solicit clients for personal injury lawsuits against drug manufacturers may be deceptive or unfair under the FTC Act." The warning letters also stated that some of the ads might misrepresent the risks associated with certain medications and could lead consumers to the false conclusion that their prescribed medication had been recalled.[1]

The FTC also noted that the Food and Drug Administration's (FDA) Adverse Event Reporting System contained reports of consumers who had viewed advertisements about the prescription drugs they were taking, then discontinued those medications, and suffered harmful consequences.[2] The FTC warned that advertisements that cause, or are likely to cause, viewers to discontinue their prescribed medications might create an unfair act or practice. As a remedial step, the FTC recommended those advertisements "include clear and prominent audio and visual disclosures" stating that a consumer should not stop taking prescribed medication without first consulting a doctor.[3]

In 2020, a Congressman asked the Chairman of the FTC for a progress report on the effects of the seven warning letters issued in 2019. The Chairman replied that each recipient committed to heed the FTC warnings for future lawsuit advertising. When asked if various renditions of the lawsuit advertisements violated the FTC Act, the Chairman essentially said that it depended on the actual claim involved. The Chairman did note that FTC staff had reviewed state laws enacted in West Virginia, Texas, and Tennessee to address deceptive lawsuit advertisements but has not taken a position on federal legislation on the topic. These state laws contain provisions similar to this bill.[4]

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.[5] The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or

---

[1] Federal Trade Commission, *FTC Flags Potentially Unlawful TV Ads for Prescription Drug Lawsuits* (September 24, 2019), *available at* https://www.ftc.gov/news-events/press-releases/2019/09/ftc-flags-potentially-unlawful-tv-ads-prescription-drug-lawsuits (last visited Mar. 19, 2021).
[2] *Id*.
[3] *Id*.
[4] Correspondence from Joseph J. Simons, Chairman of the Federal Trade Commission, to The Honorable Greg Walden, Committee on Energy and Commerce, U.S. House of Representatives, November 17, 2020 *available at* http://republicans-energycommerce.house.gov/wp-content/uploads/2020/11/2020.11.17-FTC-to-Rep.-Walden-Lawyer-Ads-.pdf
[5] Chapter 73-124, Laws of Fla., codified at part II of ch. 501, F.S.

commerce.[6] The FDUTPA is based on federal law, and s. 501.204(2), F.S., provides that it is the intent of the Legislature that due consideration and great weight be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5 of the Federal Trade Commission Act.[7]

The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.[8] The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.[9] The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[10] Consumers may also file suit through private actions.[11]

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:
- Declaratory judgments;
- Injunctive relief;
- An action for actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to $10,000 per willful violation.[12]

Remedies for private parties are limited to the following:
- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- The recovery of actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.[13]

---

[6] *See* s. 501.203, F.S. Trade or commerce means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. “Trade or commerce” shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. *See* s. 501.203(8), F.S.
[7] *See* s. 501.204(2), F.S.
[8] *See* ss. 501.203(2), 501.206, and 501.207, F.S.
[9] Section 501.203(2), F.S.
[10] *Id.*
[11] Section 501.211, F.S.
[12] 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.
[13] Section 501.211(1) and (2), F.S.

Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's (FTC's) unfair and deceptive trade practices regulations prohibit unfair[14] or deceptive[15] acts or practices in or affecting commerce.[16] The FTC's regulations include "Truth In Advertising" guidelines, which require advertisements to be truthful, not misleading, and when appropriate, backed by scientific evidence.[17] To enforce these regulations, the FTC takes law enforcement actions, provides consumer and business education, issues reports and policy guidance, leads workshops, and participates in other forums.[18]

Legal Advertising

Article V, section 15 of the Florida Constitution vests exclusive jurisdiction in the Florida Supreme Court to regulate admissions to the bar and to discipline admitted attorneys. The Florida Bar approves lawyer advertising, issues advisory opinions interpreting rules, and investigates and prosecutes attorneys for alleged violations.[19] Florida's legal advertising rules apply to all forms of communication soliciting legal services in any print or electronic form.[20] Advertisements in specified media must be submitted to the Legal Division of The Florida Bar at least 20 days prior to dissemination, including print, television, radio, direct mail, and Internet.[21]

The Legal Division reviews an advertisement to determine whether it complies with The Florida Bar's advertising rules, and issues an opinion either approving or disapproving the advertisement. The Disciplinary Counsel of The Florida Bar investigates and prosecutes attorneys for alleged violations of the advertising rules.[22]

The Florida Bar rules require legal advertising to include:
- The name of the lawyer or law firm;[23]
- The location of the law practice;[24] and

---

[14] An "unfair" practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. *See* 15 U.S.C. s. 45(n).

[15] A "deceptive" practice involves a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. *See* FTC Policy Statement on Deception (October 14, 1983), *available at* https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (last visited Mar. 26, 2021). *See also* Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* (revised, October 2019), *available at* https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority (last visited Mar. 26, 2021).

[16] 15 U.S.C. s. 45(a)(1).

[17] Federal Trade Commission, *Truth In Advertising, available at* https://www.ftc.gov/news-events/media-resources/truth-advertising (last visited Mar. 26, 2021).

[18] Federal Trade Commission, *Protecting Consumers from Fraud and Deception*, available at https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers (last visited Mar. 26, 2021).

[19] The Florida Bar, *Frequently Asked Questions About the Florida Bar, available at* https://www.floridabar.org/about/faq/ (last visited Mar. 26, 2021).

[20] Fla. Bar Code Prof. Resp. D. R. 4-7.11(a).

[21] Fla. Bar Code Prof. Resp. D. R. 4-7.11.

[22] Fla. Bar Code Prof. Resp. D. R. 4-7.19.

[23] Fla. Bar Code Prof. Resp. D. R. 4-7.12(a)(1).

[24] Fla. Bar Code Prof. Resp. D. R. 4-7.12(a)(2).

- Certain disclosures when relevant, including whether a case will be referred to another lawyer;[25] clarification as to whether a spokesperson in the advertisement is an employee or member of the law firm;[26] clarification as to whether a scene depicted is a dramatization and not an actual event.[27]

Required information must be reasonably prominent and clearly legible if written, as well as, clearly audible if spoken aloud.[28]

Health Insurance Portability and Accountability Act[29] and its Related Rules

The Federal Health Insurance Portability and Accountability Act (HIPAA), protects sensitive personal health information (PHI) from being disclosed without a patient's knowledge or consent.[30] HIPPA's two pertinent implementing rules are the Privacy Rule and the Security Rule.[31] The Privacy Rule addresses the use and disclosure of an individual's PHI by covered entities.[32] Covered entities include the following:

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.[33]

A common example of PHI is a patient's name, address, birth date, or social security number. However, PHI does not include de-identified health information or employment-related records.

The Privacy Rule protects PHI that is held or transmitted by a covered entity or its business associate by preventing covered entities from disclosing PHI without the patient's consent or knowledge unless it is being used or shared for treatment, payment, or healthcare operations or for another exempt purpose.

The Privacy Rule also requires covered entities to prominently post an electronic notice and give notice upon a specific request to patients regarding the manner in which it may use and disclose PHI. A covered entity must also provide an accounting of disclosures it has made of a patient's PHI upon his or her request as well as a copy of his or her PHI.

---

[25] Fla. Bar Code Prof. Resp. D. R. 4-7.12(b).
[26] Fla. Bar Code Prof. Resp. D. R. 4-7.13(b)(5).
[27] Fla. Bar Code Prof. Resp. D. R. 4-7.13(b)(6).
[28] Fla. Bar Code Prof. Resp. D. R. 4-7.12(d).
[29] 42 U.S.C. s. 1320.
[30] Protected health information includes all individually identifiable health information held or transmitted by a covered entity or its business associate. Pub. Law No. 104-191 (1996).*See also* Centers for Disease Control and Prevention, *Health Insurance Portability and Accountability Act of 1996 (HIPAA) available at* https://www.cdc.gov/phlp/publications/topic/hipaa.html.
[31] *See* Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* at 10-12 (March 25, 2019), *available at* https://crsreports.congress.gov/product/pdf/R/R45631 (last visited Mar 26, 2021).
[32] 45 C.F.R. s.160 and 164. *See also*, Department of Health and Human Services, *Summary of the HIPPA Privacy Rule* (July 26, 2013), *available at* https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html (last visited Mar. 26, 2021).
[33] U.S. Department of Health and Human Services, Office for Civil Rights, *Summary of the HIPAA Privacy Rule*, (last revised May 2003), *available at* https://www.hhs.gov/sites/default/files/privacysummary.pdf. (last visited Mar. 26, 2021).

The Security Rule applies to the subset of identifiable health information that a covered entity creates, receives, maintains, or transmits in electronic form called "electronic protected health information" (e-PHI).[34] The Security Rule does not apply to PHI that is transmitted orally or in writing. A covered entity must comply with the Security Rule by:

- Ensuring the confidentiality, integrity, and availability of all electronic protected health information;
- Detecting and safeguarding against anticipated threats to the security of the information;
- Protecting against anticipated impressible uses or disclosures; and
- Certifying compliance by their workforce.[35]

The Department of Health and Human Services may institute a civil enforcement under HIPPA and may seek civil penalties. A civil penalty varies based on the severity of the violation, the number of people affected, the nature of the data exposed, the length of time a violation was allowed to persist, the prior compliance history of the covered entity, and the knowledge the covered entity had of the violation.[36] The Department of Justice may institute criminal proceedings against a violator who knowingly obtained or disclosed PHI. Criminal penalties for a HIPAA violation are triggered when a person obtains PHI for financial gain or under false pretenses.[37] The criminal penalty for such HIPAA violations are punishable by up to 10 years imprisonment.[38] There is no private cause of action under HIPPA.

III. Effect of Proposed Changes:

The bill defines what a deceptive and unfair trade practice act is when it involves a paid solicitation for nonmedical professional services relating to a drug or medical device. The bill creates s. 501.2106, F.S., which provides that it is a deceptive and unfair trade practice for a person[39] to submit or approve the submittal of a solicitation for nonmedical professional services for publication, broadcast, or dissemination, or to pay for or otherwise sponsor a nonmedical solicitation if the solicitation does any of the following:

- Fails to clearly and conspicuously disclose at the outset of the solicitation the phrase, "this is a paid advertisement for nonmedical services";
- Includes terminology implying that the advertisement is a "medical alert," "health alert," "consumer alert," "public service announcement," or similar public alert or announcement;
- Displays the logo, or a similar facsimile thereof, of a federal or state governmental agency in a manner implying affiliation with or sponsorship by, a governmental agency;
- Includes terminology, including use of the term "recall" when referring to a product, implying that the product has been recalled when, in fact, the product has not been recalled by a governmental agency or through agreement between a manufacturer and a governmental agency;

[34] 45 C.F.R. s. 164.302-318.
[35] 45 C.F.R. s. 164.306.
[36] HIPAA Journal, *What are the penalties for HIPAA Violations?* https://www.hipaajournal.com/what-are-the-penalties-for-hipaa-violations-7096/ (last visited Mar. 26, 2021).
[37] *Id.*
[38] *Id.*
[39] A "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. *See* s. 1.01(3), F.S.

- Fails to clearly and conspicuously disclose the sponsor of the advertisement;
- Fails to clearly and conspicuously disclose the individual or entity that will provide professional services to persons responding to the advertisement or how those persons will be referred to such individual or entity;
- Solicits clients who may allege injury from a prescription drug approved or cleared by, or which is the subject of monograph authorized by, the United States (U.S.) Food and Drug Administration (FDA) and fails to clearly and conspicuously disclose, "Do not stop taking a prescribed medication without first consulting your doctor," and "discontinuing a prescribed medication without your doctor's advice can result in injury or death";
- Solicits clients who may allege injury from a prescription drug or medical device approved or cleared by, or which is the subject of monograph authorized by, the U.S. FDA and fails to clearly and conspicuously disclose that the drug or medical device remains approved by the U.S. FDA, unless the product is recalled or withdrawn; and
- Fails to present a written disclosure that is clearly legible and, if televised or displayed electronically, is displayed for sufficient time to enable the viewer to easily see and fully read the disclosure, or fails to present a spoken disclosure that is plainly audible and clearly intelligible.

The bill provides the following definitions:

- "Person" means individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;[40]
- "Client" means a prospective customer, client, or patron of nonmedical professional services;
- "Nonmedical solicitation" means a paid solicitation for nonmedical professional services which contains information about a drug[41] or device[42] and which is directed to the public through television, radio, the Internet, a newspaper or other periodical, an outdoor advertising sign, or another written, electronic, or recorded communication; and
- "Solicit" means to offer to provide professional services by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact.

The bill creates s. 877.025, F.S., which is effective October 1, 2021, and provides that a person who is soliciting professional services may not use, cause to be used, obtain, sell, transfer, or

[40] *See* s. 499.003(15), F.S.

[41] A "drug" is defined as recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications, which is intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, intended to affect the structure or any function of the body of humans or other animals, or intended for use as a component of any of the aforementioned articles, and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. *See* s. 499.003(17), F.S.

[42] A "device" is defined as any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including its components, parts, or accessories, which is recognized in the current edition of the United States Pharmacopoeia and National Formulary, or any supplement thereof, intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or intended to affect the structure or any function of the body of humans or other animals, and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes. *See* s. 499.003(15), F.S.

disclose to another person an individual's protected health information,[43] without the individual's written authorization.

The bill establishes the following:
- A person who violates s. 877.025, F.S., commits a deceptive and unfair trade practice;
- A person who willfully and knowingly violates s. 877.025, F.S., commits a misdemeanor of the first degree;[44] and
- A person who willfully and knowingly violates s. 877.025, F.S., with intent to sell, transfer, or use protected health information for financial gain commits a felony of the second degree, but the imprisonment may not exceed 10 years and the fine must be more than $10,000 but may not exceed $250,000.

The bill provides that s. 877.025, F.S., does not apply to the disclosure or use of protected health information to an attorney or by an attorney for use in a judicial or administrative proceeding, or any other use or disclosure otherwise authorized or required by law.

Except as otherwise provided, the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill creates new criminal offenses relating to the unlawful use of protected health information. Criminal laws are exempt from the requirements of article VII, section 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[43] "Protected health information" means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium, but excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, in records described at 20 U.S.C. 1232g(a)(4)(B)(iv), in employment records held by a covered entity in its role as employer, and regarding a person who has been deceased for more the 50 years. *See* 45 C.F.R. s. 106.103.
[44] A misdemeanor of the first degree is punishable by a definite 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.

E. Other Constitutional Issues:

In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, the Supreme Court held that commercial speech is protected under the First Amendment.[45] The Court based its opinion on the public's right to receive a free flow of commercial information. The Court also held that some forms of commercial speech regulation are surely permissible, and that untruthful speech, commercial or otherwise, has never been protected.[46] In the case of *In re R. M. J.*, the Supreme Court held that misleading advertising may be prohibited entirely under the commercial speech doctrine and when advertising is subject to abuse, states may impose appropriate restrictions. .[47]

In *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, the Supreme Court established a three-part test for analyzing the limitations of advertising regulations.[48] Under the *Central Hudson* test, a state must show that any commercial speech regulation aimed at regulating "non-misleading" commercial speech is in service of a substantial state interest, directly advances that interest, and is no more extensive than necessary to serve that interest.[49] Although commercial speech regulations must meet the *Central Hudson* test, in *Bates v. State Bar of Arizona*, the Supreme Court held that while the First Amendment permits the regulation of advertising by attorneys that is false, deceptive, or misleading or which concerns transaction which are themselves illegal, reasonable time, place, and manner restrictions on advertising are authorized.[50]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact created by legislation, states that the Economic and Demographic Research proposed estimate of SB 1992 is "positive indeterminate." This projection is based upon the facts that it is not known how extensive the activity outlined in the bill is or if this activity might decrease once the law goes into effect. However, because the bill creates a new second degree felony, it could impact the Department of Corrections and the new first degree misdemeanor could impact counties.

---

[45] *See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).
[46] *Id*.
[47] *See In re R.M.J.*, 455 U.S. 191 (1982).
[48] *See Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980).
[49] *Id*.
[50] *See Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates the following sections of the Florida Statutes: 501.2106 and 877.025.

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 Harrell

A bill to be entitled

An act relating to the solicitation of nonmedical services; creating s. 501.2106, F.S.; defining terms; providing that a person who submits or sponsors a nonmedical solicitation that contains certain terminology or fails to include specified disclosures commits a deceptive and unfair trade practice, subject to the penalties and remedies of the Florida Deceptive and Unfair Trade Practices Act; creating s. 877.025, F.S.; defining terms; prohibiting the unauthorized use, sale, or transfer of protected health information for the purpose of soliciting professional services; providing that a person who willfully and knowingly violates such prohibition commits a deceptive and unfair trade practice, subject to the penalties and remedies of the Florida Deceptive and Unfair Trade Practices Act; providing criminal penalties for willful and knowing violations and enhanced criminal penalties for violations committed for financial gain; providing applicability; providing effective dates.

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

Section 1. Section 501.2106, Florida Statutes, is created to read:

501.2106 Nonmedical solicitation; deceptive and unfair trade practices.—

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

(a) “Client” means a prospective customer, client, or patron of nonmedical professional services.

(b) “Nonmedical solicitation” means a paid solicitation for nonmedical professional services which contains information about a drug or device as defined in s. 499.003 and which is directed to the public through television; radio; the Internet, including a domain name; a newspaper or other periodical; an outdoor advertising sign; or another written, electronic, or recorded communication.

(c) “Person” has the same meaning as in s. 1.01(3).

(2) A person who submits or approves the submittal of a nonmedical solicitation for publication, broadcast, or dissemination, or who pays for or otherwise sponsors a nonmedical solicitation, commits a deceptive and unfair trade practice under this part if the solicitation, once published, broadcast, or disseminated, does any of the following:

(a) Fails to clearly and conspicuously disclose at the outset of the solicitation the phrase: “This is a paid advertisement for nonmedical services.”

(b) Includes terminology implying that the advertisement is a “medical alert,” “health alert,” “consumer alert,” “public service announcement,” or similar public alert or announcement.

(c) Displays the logo, or a similar facsimile thereof, of a federal or state governmental agency in a manner implying affiliation with, or sponsorship by, a governmental agency.

(d) Includes terminology, including use of the term “recall” when referring to a product, implying that the product has been recalled when, in fact, the product has not been recalled by a governmental agency or through agreement between a manufacturer and a governmental agency.

(e) Fails to clearly and conspicuously disclose the sponsor of the advertisement.

(f) Fails to clearly and conspicuously disclose the individual or entity that will provide professional services to persons responding to the advertisement or how those persons will be referred to such individual or entity.

(g) Solicits clients who may allege injury from a prescription drug approved or cleared by, or which is the subject of a monograph authorized by, the United States Food and Drug Administration and fails to clearly and conspicuously disclose the following warning: “Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor’s advice can result in injury or death.”

(h) Solicits clients who may allege injury from a prescription drug or medical device approved or cleared by, or which is the subject of a monograph authorized by, the United States Food and Drug Administration and fails to clearly and conspicuously disclose that the drug or medical device remains approved by the United States Food and Drug Administration, unless the product is recalled or withdrawn.

(i) Fails to present any disclosure required by this subsection such that:

1. A written disclosure is clearly legible and, if televised or displayed electronically, is displayed for sufficient time to enable the viewer to easily see and fully read the disclosure.

2. A spoken disclosure is plainly audible and clearly

intelligible.

Section 2. Effective October 1, 2021, section 877.025, Florida Statutes, is created to read:

877.025 Solicitation of nonmedical services; wrongful use or disclosure of protected health information.—

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

(a) “Person” has the same meaning as in s. 1.01(3).

(b) “Protected health information” has the same meaning as provided in 45 C.F.R. s. 106.103.

(c) “Solicit” means to offer to provide professional services by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact.

(2) A person may not use, cause to be used, obtain, sell, transfer, or disclose to another person an individual’s protected health information, without that individual’s written authorization, to solicit professional services.

(3)(a) A person who violates subsection (2) commits a deceptive and unfair trade practice subject to the penalties and remedies provided in part II of chapter 501.

(b) A person who willfully and knowingly violates subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person who willfully and knowingly violates subsection (2) with intent to sell, transfer, or use protected health information for financial gain commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, except that the term of imprisonment may not exceed 10 years and the fine must be more than $10,000 but may not exceed $250,000.

(4) This section does not apply to the disclosure of protected health information to an attorney, or the attorney's use of such protected health information, in any judicial or administrative proceeding or any other use or disclosure otherwise authorized or required by law.

Section 3. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL
25th District

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

March 24, 2021

Senator Jeff Brandes
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Brandes,

I respectfully request that **SB 1992 – Solicitation of Non-Medical Services** be placed on the next available agenda for the Judiciary Committee Meeting. **SB 1992** passed its last Committee Unanimously.

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

Thank you,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

SB1992
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Solicitation of Nonmedical Services

Name George Feijoo

Job Title Consultant

Address 108 S. Monroe St.
Street

Tallahassee FL 32301
City State Zip

Phone 850-681-0024

Email grfeijoo@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing US Chamber of Commerce

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)

3-29-21

Meeting Date

1992

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Solicitation of nonmedical services

Name Jarrod Fowler

Job Title Director of Health Care Policy

Address

Street

City State Zip

Phone 850-224-6496

Email jfowler@flmedical.org

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

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Florida Medical Association

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/21
Meeting Date

1992
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Jared Willis

Job Title

Address 200 W. College Ave Ste 201
Street

Phone 284-1996

City State Zip

Email jwillis@strategosgroup.com

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

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

Representing Alliance for Patient Access

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

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

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

1992
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Solicitation of Nonmedical Services

Name: Carolyn Johnson

Job Title: Senior Policy Director

Address: 136 S Bronough Street
Street

Tallahassee (*City*) FL (*State*) 32301 (*Zip*)

Phone: 850-521-1200

Email: cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Florida Chamber of Commerce

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03.29.21
Meeting Date

1992
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Solicitation of Nonmedical Services

Name William Large

Job Title President

Address 210 South Monroe Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-0170

Email William@fljustice.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021
Meeting Date

SB 1992
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Solicitation of Nonmedical Services

Name James W. Gusafson, Jr.

Job Title Attorney

Address 517 North Calhoun Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-224-7600

Email jwg@searcylaw.com

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

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21
Meeting Date

1992
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Solicitation of Nonmedical Services

Name: Steve Winn

Job Title: Executive Director

Address: 2544 Blairstone Pines Dr
Street

Tallahassee — FL — 32301
City — *State* — *Zip*

Phone: 878-7364

Email:

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Florida Osteopathic Medical 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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 282

INTRODUCER: Judiciary Committee; and Senators Baxley and Albritton

SUBJECT: Moments of Silence in Public Schools

DATE: March 30, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Ravelo	Cibula	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 282 requires a moment of silence to be set aside for students during each school day.

The bill revises current law that allows a district school board to set aside a brief period of time for silent prayer or meditation. Instead, the bill requires each teacher during 1st period to set aside 1 to 2 minutes for a moment of silence. A teacher may not make suggestions as to the nature of any reflection, and a student may not interfere with another student's participation.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2021.

II. Present Situation:

District school boards may set aside up to two minutes for silent prayer or meditation at the start of each school day or each school week in the public schools in the district.[1]

[1] Section 1003.45, F.S., added in s. 1, ch. 80-336, L.O.F.

Fourteen states require a moment of silence or a period for contemplation or prayer during each school day.[2] An additional eighteen states authorize the school district, school, or classroom to observe a period of silence or prayer during each school day.[3]

III. Effect of Proposed Changes:

SB 282 amends s. 1003.45, F.S., to require that a moment of silence be set aside for students during each school day. Currently, a district school board *may* provide a brief period of meditation or silent prayer not to exceed two minutes.

The bill directs the principal of each public school to require teachers in first-period classrooms in all grades to set aside 1 to 2 minutes daily[4] for a moment of silence, during which students may not interfere with other students' participation.

The bill provides that a teacher:

- May not make suggestions as to the nature of any reflection that a student may engage in during the moment of silence.
- Must encourage parents or guardians to discuss with their children how best to use the moment of silence.

The bill provides legislative findings for the value of a moment of daily reflection.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

---

[2] Ala. Code s. 16-1-20; Ark. Code Ann. s. 6-10-115; Conn. Gen. Stat. s. 10-16a; Ga. Code Ann. s. 20-2-150; 105 Ill. Comp. Stat. 20/1; Ind. Code s 20-30-5-4.5; Mass. Gen. Laws Ann. ch. 71, s. 1A; Nev. Rev. Stat. Ann. s. 388.075; N.H. Rev. Stat. s. 189:1-b; R.I. Gen. Laws s. 16-12-3.1; S.C. Code Ann. s. 59-1-443; Tenn. Code Ann. s. 49-6-1004; Tex. Code Ann. s. 25.082(d); Va. Code Ann. s. 22.1-203.

[3] Ariz. Rev. Stat. Ann. s. 15-342(21); Del. Code Ann. tit. 14, s. 4101A; Section 1003.45, F.S.; Kan. Stat. Ann. s. 72-9929; Ky. Rev. Stat. Ann. s. 158.175; La. Rev. Stat. Ann. s. 17:2115; Me. Rev. Stat. Ann. tit. 20-a., s. 4805; Md. Code, Educ. s. 7-104; Mich. Comp. Laws Ann. s. 380.1565; Minn. Stat. Ann. s. 121A.10; Mont. Code Ann. s. 20-7-112; N.M. Stat. Ann. s. 22-27-3; N.Y. law s. 3029-a; N.C. Gen. Stat. s. 115C-47(29); N.D. Cent. Code s. 15.1-19-03.1; Ohio Rev. Code s. 3313.601; 24 Pa. Const. Stat. s. 15-1516.1; Utah Code Ann. s. 53G-7-207.

[4] One to 2 minutes daily accumulates to 3 to 6 hours of instructional time over the course of the school year. Florida Department of Education, *Senate Bill 282 Agency Analysis* (December 18, 2020), p. 3-4.

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 1003.45, 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 Judiciary on March 29, 2021:
The committee substitute revises the requirement that teachers make suggestions as to the best use of the moment of silence. Instead, a teacher must encourage parents or guardians to discuss with their children how best to use the moment of silence.

B. Amendments:

None.

262852

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Polsky) recommended the following:

Senate Amendment (with title amendment)

Delete lines 48 - 50
and insert:
parents or guardians to discuss with their children how to best use the moment of silence.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 14 - 16
and insert:

parents or guardians to discuss with their children how to best use the moment of silence; providing an effective date.

By Senator Baxley

A bill to be entitled

An act relating to moments of silence in public schools; amending s. 1003.45, F.S.; providing legislative findings; requiring that public school principals require certain teachers to set aside time for a moment of silence at the beginning of each school day; specifying the duration of the required moment of silence; prohibiting teachers from making suggestions as to the nature of any reflection that a student may engage in during the moment of silence; deleting a provision authorizing district school boards to provide a brief period of silent prayer or meditation; requiring certain teachers to encourage parents or guardians to discuss the moment of silence with their children and to make suggestions as to the best use of this time; providing an effective date.

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

Section 1. Section 1003.45, Florida Statutes, is amended to read:

1003.45 Permitting study of the Bible and religion; requiring a moment of silence ~~permitting brief meditation period~~.—

(1) The district school board may install in the public schools in the district a secular program of education including, but not limited to, an objective study of the Bible and of religion.

(2) The Legislature finds that in today's hectic society

too few persons are able to experience even a moment of quiet reflection before plunging headlong into the activities of daily life. Young persons are particularly affected by the absence of an opportunity for a moment of quiet reflection. The Legislature finds that our youth, and society as a whole, would be well served if students in the public schools were afforded a moment of silence at the beginning of each school day.

(3) The principal of each public school shall require teachers in first-period classrooms in all grades to set aside at least 1 minute, but ~~district school board may provide that a brief period,~~ not more than ~~to exceed~~ 2 minutes, daily~~,~~ for a moment ~~the purpose~~ of silence, during which students may not interfere with other students' participation. A teacher may not make suggestions as to the nature of any reflection that a student may engage in during the moment of silence ~~silent prayer or meditation be set aside at the start of each school day or each school week in the public schools in the district~~.

(4) Each first-period classroom teacher shall encourage parents or guardians to discuss the moment of silence with their children and to make suggestions as to the best use of this time.

Section 2. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

February 3, 2021

The Honorable Chair Jeff Brandes
414 Senate Office Building
Tallahassee, FL 32399

Dear Chair Brandes,

I would like to request that SB 282 Moments of Silence be heard in the next Judiciary Committee meeting.

This bill requires a moment of silence to be set aside for students during the beginning of each school day. The bill directs the principal of each public school to require teachers in first-period classrooms in all grades to set aside one to two minutes daily for a moment of silence, during which students may not interfere with other students' participation.

This gives them a moment to gather their thoughts before they start their day, which all of us can normally use.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis K. Baxley
Senate District 12

DKB/dd

REPLY TO:
- 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

3-29-21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 282

Meeting Date | Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Moment of Silence

Name Barbara DeVane

Job Title

Address 625 E Brevard St
Street

Phone 222-3969

Email barbaradevane1@yahoo.com

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-29-21
Meeting Date

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

282
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Moment of Silence

Name Devon Graham

Job Title Assistant State Director (American Atheists)

Address
Street

Phone

City State Zip

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing American Atheists.

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021
Meeting Date

282
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Moments of Silence in Public Schools

Name Pamela Burch Fort

Job Title

Address 104 South Monroe Street
Street

Tallahassee FL 32301
City State Zip

Phone 850-425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ACLU 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

APPEARANCE RECORD

3/29/21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 282

Meeting Date

Bill Number (if applicable)

Topic Moments of Silence

Amendment Barcode (if applicable)

Name David Serdan

Job Title Retired, Citizen Senior of Fl.

Address 66 Wintergreen Dr Phone 352 805 6597

Street

Fruitland Park Fl Email Gottendave1955@gmail.com

City State Zip 34731

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

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

Representing Self & Wife Many Churches I go to friends

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)

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Judiciary Committee **Judge:**

Started: **3/29/2021 3:35:42 PM**
Ends: **3/29/2021 6:00:28 PM** **Length: 02:24:47**

3:35:41 PM Meeting called to order by Chair Brandes
3:35:43 PM Roll call by CAA Celia Georgiades
3:35:54 PM Quorum present
3:36:04 PM Comments from Chair Brandes
3:36:17 PM Introduction of Tab 5, SB 1234 by Chair Brandes
3:36:34 PM Explanation of SB 1234, False Reports of Crimes by Senator Boyd
3:37:20 PM Explanation of Amendment Barcode 182662 by Senator Boyd
3:38:43 PM Comments from Chair Brandes
3:38:49 PM Question from Senator Broxson
3:38:57 PM Response from Senator Boyd
3:39:34 PM Response from Chair Brandes
3:39:42 PM Response from Senator Boyd
3:40:08 PM Comments from Chair Brandes
3:40:15 PM Amendment adopted
3:40:18 PM Comments from Chair Brandes
3:40:23 PM Jennifer Cook Pritt, The Florida Police Chiefs Association waives in support
3:40:35 PM David Serdar in support
3:40:55 PM Comments from Chair Brandes
3:41:00 PM Senator Thurston in debate
3:42:15 PM Closure by Senator Boyd
3:42:25 PM Roll call by CAA
3:42:48 PM CS/SB 1234 reported favorably
3:43:09 PM Introduction of Tab 7, SB 1950 by Chair Brandes
3:43:40 PM Explanation of CS/SB 1950, Financial Institutions by Senator Gruters
3:44:36 PM Introduction of Amendment Barcode 104868 by Chair Brandes
3:44:51 PM Explanation of Amendment by Senator Gruters
3:45:01 PM Comments from Chair Brandes
3:45:09 PM Amendment adopted
3:45:18 PM Comments from Chair Brandes
3:45:25 PM Question from Senator Thurston
3:45:34 PM Response from Senator Gruters
3:46:26 PM Alex Anderson, Office of Financial Regulation waives in support
3:46:38 PM Closure waived
3:46:41 PM Roll call by CAA
3:46:47 PM CS/CS/SB 1950 reported favorably
3:47:08 PM Question from Senator Thurston
3:47:24 PM Response from Chair Brandes
3:47:28 PM Introduction of Tab 4, SB 826 by Chair Brandes
3:47:49 PM Explanation of SB 826, Child Protection Teams by Senator Baxley
3:48:27 PM Comments from Chair Brandes
3:48:34 PM Douglas Bell, Florida Chapter of the American Academy of Pediatrics waives in support
3:48:51 PM Comments from Chair Brandes

3:48:56 PM Closure waived
3:49:01 PM Roll call by CAA
3:49:06 PM SB 826 reported favorably
3:49:19 PM Introduction of Tab 2, CS/SB 716 by Chair Brandes
3:49:34 PM Explanation of CS/SB 716, Consent for Pelvic Examinations by Senator Book
3:49:51 PM Introduction of Amendment Barcode 190574 by Chair Brandes
3:49:56 PM Explanation of Amendment by Senator Book
3:50:30 PM Comments from Chair Brandes
3:50:36 PM Question from Chair Brandes
3:50:43 PM Response from Senator Book
3:51:27 PM Follow-up question from Chair Brandes
3:51:33 PM Response from Senator Book
3:51:54 PM Follow-up question from Chair Brandes
3:51:59 PM Response from Senator Book
3:52:20 PM Comments from Chair Brandes
3:52:29 PM Theresa Prichard, Florida Council Against Sexual Violence waives in support
3:53:03 PM Speaker Barbara DeVane, FL NOW in support
3:53:08 PM Amendment adopted
3:53:12 PM Comments from Chair Brandes
3:53:17 PM Jan Gorrie, Tampa General Hospital waives in support
3:53:23 PM Juliette Kong, Kids House of Seminole waives in support
3:53:28 PM Steve Winn, Florida Osteopathic Medical Association waives in support
3:53:32 PM Jason Rodriguez, BayCare Health System waives in support
3:53:35 PM Barbara DeVane, FL NOW waives in support
3:53:40 PM Zachary Hoover, Orlando Healthy waives in support
3:53:45 PM Jared Willis, Nemous Children's Hospital waives in support
3:54:06 PM Speaker Jarrod Fowler, Florida Medical Association waives in support
3:54:23 PM Comments from Chair Brandes
3:54:29 PM Senator Gibson in debate
3:55:14 PM Chair Brandes in debate
3:55:42 PM Roll call by CAA
3:55:48 PM CS/CS/SB 716 reported favorably
3:56:08 PM Introduction of Tab 8, CS/SB 1508 by Chair Brandes
3:56:11 PM Explanation of CS/SB 1508, Public Records by Senator Book
3:58:09 PM Comments from Chair Brandes
3:58:25 PM Question from Chair Brandes
3:58:29 PM Response from Senator Book
3:58:39 PM Comments from Chair Brandes
3:58:44 PM Roll call by CAA
3:58:50 PM CS/SB 1508 reported favorably
3:59:05 PM Introduction of Tab 9, CS/SB 1868, Privileged Communications Made to Crime Stoppers Organizations by Senator Bean
4:00:21 PM Comments from Chair Brandes
4:00:26 PM Question from Senator Boyd
4:00:33 PM Response from Senator Bean
4:01:03 PM Introduction of Amendment Barcode 709580 by Chair Brandes
4:01:13 PM Explanation of Amendment by Senator Bean
4:01:48 PM Comments from Chair Brandes
4:02:00 PM Amendment adopted
4:02:09 PM Comments from Chair Brandes
4:02:13 PM Question from Senator Thurston
4:02:20 PM Response from Senator Bean

4:02:58 PM	Follow-up question from Senator Thurston
4:03:07 PM	Response from Senator Bean
4:03:21 PM	Comments from Chair Brandes
4:03:41 PM	Closure waived
4:03:47 PM	Roll call by CAA
4:03:52 PM	CS/CS/SB 1868 reported favorably
4:04:05 PM	Introduction of Tab 11, SB 1992 by Chair Brandes
4:04:14 PM	Explanation of SB 1992, Solicitation of Nonmedical Services by Senator Harrell
4:07:12 PM	Comments from Chair Brandes
4:07:13 PM	Question from Senator Polsky
4:07:33 PM	Response from Senator Harrell
4:08:08 PM	Follow-up question from Senator Polsky
4:08:14 PM	Response from Senator Harrell
4:09:05 PM	Question from Senator Polsky
4:09:37 PM	Response from Senator Harrell
4:09:58 PM	Follow-up question from Senator Polsky
4:10:07 PM	Response from Senator Harrell
4:10:50 PM	Follow-up question from Senator Polsky
4:10:59 PM	Response from Senator Harrell
4:12:03 PM	Question from Senator Thurston
4:12:17 PM	Response from Senator Harrell
4:14:07 PM	Follow-up question from Senator Thurston
4:14:16 PM	Response from Senator Harrell
4:14:39 PM	Follow-up question from Senator Thurston
4:14:49 PM	Response from Senator Harrell
4:15:30 PM	Response from Chair Brandes
4:15:34 PM	Follow-up question from Senator Thurston
4:15:45 PM	Response from Senator Harrell
4:16:13 PM	Follow-up question from Senator Thurston
4:16:22 PM	Response from Senator Harrell
4:16:35 PM	Speaker James Gusafson, Jr., Florida Justice Association in opposition
4:21:29 PM	Speaker William Large, Florida Justice Reform Institute in support
4:24:46 PM	Question from Chair Brandes
4:24:51 PM	Response from Mr. Large
4:25:26 PM	Question from Senator Rouson
4:25:32 PM	Response from Mr. Large
4:26:23 PM	Follow-up question from Senator Rouson
4:26:31 PM	Response from Mr. Large
4:27:10 PM	Question from Senator Polsky
4:27:23 PM	Response from Mr. Large
4:28:43 PM	Question from Senator Gibson
4:29:05 PM	Response from Chair
4:29:40 PM	Steve Winn, Florida Osteopathic Medical Association waives in support
4:29:44 PM	Carolyn Johnson, Florida Chamber of Commerce waives in support
4:29:50 PM	Speaker Jared Willis, Alliance for Patient Access in support
4:31:48 PM	Speaker Jarrod Fowler, Florida Medical Association waives in support
4:32:06 PM	Comments from Chair Brandes
4:32:20 PM	Senator Harrell in closure
4:32:25 PM	Roll call by CAA
4:33:19 PM	Senator Baxley moves to reconsider and temporarily postponed the Bill
4:34:19 PM	Question from Senator Gibson
4:34:27 PM	Response from Chair Brandes

4:34:58 PM Introduction of Tab 10, SB 386 by Chair Brandes
4:35:24 PM Explanation of SB 386, Payments to Clerks of the Circuit Courts by Senator Wright
4:35:43 PM Chair turned over to Senator Boyd
4:35:51 PM Introduction of Amendment Barcode 547058 by Chair Boyd
4:36:01 PM Explanation of Amendment by Senator Brandes
4:36:28 PM Comments from Chair Boyd
4:36:36 PM Question from Senator Broxson
4:36:42 PM Response from Senator Brandes
4:37:22 PM Follow-up question from Senator Broxson
4:37:30 PM Response from Senator Brandes
4:37:46 PM Comments from Chair Boyd
4:37:51 PM Question from Senator Thurston
4:37:56 PM Response from Senator Brandes
4:39:14 PM Comments from Chair Boyd
4:39:23 PM Closure waived
4:39:25 PM Amendment adopted
4:39:30 PM Comments from Chair Boyd
4:39:35 PM Chair returned to Senator Brandes
4:39:48 PM Question from Senator Thurston
4:39:57 PM Response from Senator Wright
4:41:20 PM Carrie Boyd, SPLC Action Fund waives in support
4:41:24 PM Jorge Chamizo, New Venture Fund waives in support
4:41:27 PM Brewster Bevis, Associated Industries of Florida waives in support
4:41:31 PM Pamela Burch Fort, ACLU of Florida and NAACP Florida State Conference waives in support
4:41:53 PM Comments from Chair Brandes
4:42:00 PM Senator Thurston in debate
4:44:03 PM Senator Broxson in debate
4:44:56 PM Chair Brandes in debate
4:45:26 PM Senator Wright in closure
4:45:59 PM Roll call by CAA
4:47:02 PM CS/SB 386 reported favorably
4:47:17 PM Introduction of Tab 3, CS/SB 742 by Chair Brandes
4:47:53 PM Explanation of CS/SB 742, Insurance by Senator Perry
4:48:44 PM Comments from Chair Brandes
4:48:54 PM Question from Senator Rouson
4:49:16 PM Response from Senator Perry
4:49:50 PM Follow-up question from Senator Rouson
4:50:00 PM Response from Senator Perry
4:50:16 PM Comments from Chair Brandes
4:50:23 PM Speaker Timothy Meenan in support
4:50:57 PM Speaker Reginald Garcia, Florida Justice Association for information
4:53:56 PM Greg Black, R Street Institute waives in support
4:54:01 PM Scott Matiyow, Personal Insurance Federation of Florida waives in support
4:54:08 PM Speaker David Serdar
4:55:14 PM Comments from Chair Brandes
4:55:21 PM Senator Thurston in debate
4:55:36 PM Comments from Chair Brandes
4:55:51 PM Chair Brandes in debate
4:56:15 PM Senator Perry in closure
4:56:21 PM Roll call by CAA
4:57:16 PM CS/SB 742 reported favorably

4:57:48 PM	Introduction of Tab 12, SB 282 by Chair Brandes
4:58:48 PM	Explanation of SB 282, Moments of Silence in Public Schools by Senator Baxley
4:58:53 PM	Introduction of Amendment Barcode 262852 by Chair Brandes
4:58:57 PM	Explanation of Amendment by Senator Polsky
4:59:33 PM	Comments from Chair Brandes
4:59:52 PM	Senator Baxley in support of Amendment
5:00:04 PM	Senator Polsky in closure
5:00:11 PM	Amendment adopted
5:00:17 PM	Comments from Chair Brandes
5:00:24 PM	Speaker Devon Graham, American Atheists in opposition
5:02:55 PM	Barbara DeVane, FL NOW waives in opposition
5:03:01 PM	Pamela Burch Fort, ACLU of Florida waives in opposition
5:03:07 PM	Speaker David Serdar
5:04:36 PM	Comments from Chair Brandes
5:04:46 PM	Senator Baxley in closure
5:05:00 PM	Roll call by CAA
5:05:18 PM	CS/SB 282 reported favorably
5:05:36 PM	Introduction of Tab 1, SB 1922 by Chair Brandes
5:06:11 PM	Chair passed to Senator Boyd
5:06:46 PM	Speaker Barbara DeVane, FL NOW in opposition
5:07:13 PM	Speaker Camille Fiveash in opposition
5:09:31 PM	Speaker Kristina Miller in opposition
5:11:41 PM	Speaker Carla McAuliffe in opposition
5:14:45 PM	Speaker Murielle Fournier in opposition
5:17:31 PM	Leisa Athey waives in opposition
5:18:31 PM	Sarah Holmes waives in opposition
5:18:36 PM	Speaker Andrea Reed, Florida Bar Family Law Section in opposition
5:21:33 PM	Speaker Dr. Natalie Willis in support
5:23:48 PM	Kim Cornelius waives in support
5:23:52 PM	George Smith waives in support
5:23:56 PM	Joyce Smith waives in support
5:24:03 PM	Marc Johnson, Florida Family Fairness, Inc. waives in support
5:24:11 PM	Speaker George Smith in support
5:26:47 PM	Speaker Joel Cornelius in support
5:28:14 PM	Speaker Vernon Askegard in support
5:29:43 PM	Speaker Sonia Delgado in support
5:31:26 PM	Andrea Tovar waives in opposition
5:32:31 PM	Speaker Shannon Novey, American Academy of Matrimonial Lawyers in opposition
5:34:11 PM	Trish Neely, League of Women Voters in opposition
5:34:43 PM	Speaker Lisa Williams in opposition
5:35:31 PM	Speaker Lynn Gray in opposition
5:38:29 PM	Comments from Chair Brandes
5:39:15 PM	Explanation of SB 1922, Dissolution of Marriage by Senator Gruters
5:40:08 PM	Comments from Chair Brandes
5:40:14 PM	Question from Senator Broxson
5:40:21 PM	Response from Senator Gruters
5:41:57 PM	Comments from Chair Brandes
5:42:11 PM	Introduction of Amendment Barcode 699572 by Chair Brandes
5:42:25 PM	Explanation of Amendment by Chair Gruters
5:42:28 PM	Amendment adopted
5:42:32 PM	Comments from Chair Brandes
5:42:55 PM	Senator Mayfield in debate

5:45:47 PM Chair Brandes in debate
5:46:38 PM Senator Gruters in closure
5:47:06 PM Roll call by CAA
5:48:07 PM CS/SB 1922 reported favorably
5:48:31 PM Introduction of Tab 6, SB 1884 by Chair Brandes
5:48:48 PM Explanation of SB 1884, Preemption of Firearms and Ammunition Regulation by Senator Rodrigues
5:49:34 PM Question from Senator Thurston
5:49:47 PM Response from Senator Rodrigues
5:51:20 PM Follow-up question from Senator Thurston
5:51:28 PM Response from Senator Rodrigues
5:52:21 PM Response from Chair Brandes
5:52:48 PM Gaby Loewenstein, Mom Demand Action Florida Chapter waives in opposition
5:52:53 PM Trish Neely, League of Women Voters waives in support
5:52:57 PM Barbara DeVane, FL NOW waives in opposition
5:53:12 PM Speaker Luis Valdes, Gun Owners of America, Inc. in support
5:54:04 PM Comments from Chair Brandes
5:54:13 PM Question from Senator Gibson
5:54:42 PM Response from Senator Rodrigues
5:55:24 PM Senator Thurston in debate
5:57:13 PM Senator Polsky in debate
5:59:30 PM Closure waived
5:59:33 PM Roll call by CAA
5:59:37 PM SB 1884 reported favorably
5:59:55 PM Senator Mayfield would like to be shown voting in the affirmative on CS/SB 742
6:00:11 PM Comments from Chair Brandes
6:00:12 PM Meeting adjourned