

Tab 1 CS/CS/SB 76 by JU, BI, Boyd (CO-INTRODUCERS) Brandes; (Compare to H 00305) Property Insurance

670126	D	S	FAV	RC, Boyd	Delete everything after	03/19 08:56 AM
~~518486~~	AA	S	WD	RC, Brandes	btw L.4 - 5:	03/19 08:56 AM
861760	AA	S	UNFAV	RC, Thurston	Delete L.5 - 43.	03/19 08:56 AM
727572	AA	S	UNFAV	RC, Farmer	Delete L.44 - 49.	03/19 08:56 AM
798322	AA	S	UNFAV	RC, Gibson	Delete L.50 - 103.	03/19 08:56 AM
651414	AA	S	UNFAV	RC, Gibson	Delete L.73 - 88:	03/19 08:56 AM
547800	AA	S	UNFAV	RC, Farmer	Delete L.104 - 123.	03/19 08:56 AM
706816	AA	S	UNFAV	RC, Thurston	Delete L.150 - 325.	03/19 08:56 AM
~~128746~~	AA	S	WD	RC, Farmer	Delete L.483:	03/19 08:56 AM
546412	AA	S	UNFAV	RC, Farmer	Delete L.486:	03/19 08:56 AM
963428	A	S	OO	RC, Thurston	Delete L.153 - 189.	03/19 08:56 AM
934564	A	S	OO	RC, Gibson	Delete L.199 - 252.	03/19 08:56 AM
503350	A	S	OO	RC, Gibson	Delete L.222 - 237:	03/19 08:56 AM
650462	A	S	OO	RC, Farmer	Delete L.253 - 272.	03/19 08:56 AM
393102	A	S	OO	RC, Thurston	Delete L.299 - 463.	03/19 08:56 AM
971154	A	S	OO	RC, Thurston	Delete L.621 - 623:	03/19 08:56 AM
397328	A	S	OO	RC, Farmer	Delete L.624:	03/19 08:56 AM

Tab 2 CS/SB 96 by CF, Book (CO-INTRODUCERS) Brodeur; (Compare to H 07039) Child Welfare

335142	A	S		RC, Book	Delete L.526 - 528:	03/17 08:23 AM
526162	SA	S		RC, Book	Delete L.508 - 547:	03/24 07:16 AM

Tab 3 CS/SB 148 by RI, Bradley; (Compare to CS/H 00329) Beverage Law

~~719554~~	A	S	WD	RC, Brandes	btw L.277 - 278:	03/17 11:00 AM

Tab 4 CS/CS/SB 228 by JU, CM, Bradley (CO-INTRODUCERS) Burgess; (Similar to CS/H 00121) Notaries Public

175934	A	S		RC, Bradley	Delete L.366 - 383:	03/16 02:35 PM

Tab 5 CS/SB 286 by RI, Perry; (Identical to CS/H 00137) Fire Sprinklers

Tab 6 CS/SB 354 by JU, Harrell; (Identical to CS/H 00495) Restitution

682316	A	S		RC, Harrell	Delete L.30 - 55:	03/23 02:39 PM

Tab 7 CS/SB 378 by GO, Bradley; (Similar to CS/H 00585) Payment for Construction Services

Tab 8 CS/SB 602 by CM, Burgess; (Identical to CS/H 00339) Business Organizations

Tab 9 CS/SB 702 by JU, Thurston; (Identical to H 00253) Individual Retirement Accounts

Tab 10 SB 728 by Broxson; (Identical to H 00733) Credit for Reinsurance

Tab 11 SB 738 by Baxley; (Identical to H 00353) Bicycle Operation Regulations

336198	A	S		RC, Brandes	btw L.16 - 17:	03/17 08:18 AM

Tab 12 SB 752 by Gruters; (Identical to H 00067) Public Defender Duties

Tab 13	CS/SB 776 by CJ, Gainer ; (Similar to H 00783) Racketeering

Tab 14	CS/SB 890 by CJ, Hooper ; (Identical to CS/H 01541) Use of Electronic Databases

446042	A	S	RCS	RC, Hooper	Delete L.26 - 32:	03/18 12:52 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Thursday, March 18, 2021

TIME: 9:00—11:00 a.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Passidomo, Chair; Senator Garcia, Vice Chair; Senators Albritton, Baxley, Bean, Book, Bracy, Brandes, Diaz, Farmer, Gibson, Gruters, Hutson, Mayfield, Powell, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	CS/CS/SB 76 Judiciary / Banking and Insurance / Boyd (Compare H 305, CS/H 717, S 212, CS/S 1598)	Property Insurance; Prohibiting a person from providing claims adjusting services unless the person meets specified requirements; providing that, for certain attorney fees awarded for claims arising under surplus lines property insurance policies, a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that certain provisions relating to homeowners' policies, offers of replacement cost coverage, and offers of law and ordinance coverage do not prohibit insurers from providing specified property insurance policies by including roof surface reimbursement schedules; requiring notice of intent to initiate litigation, etc. BI 02/02/2021 Fav/CS JU 03/09/2021 Fav/CS RC 03/18/2021 Amendment Adopted - Temporarily Postponed	Amendment Adopted - Temporarily Postponed
2	CS/SB 96 Children, Families, and Elder Affairs / Book (Compare H 7039)	Child Welfare; Transferring existing provisions relating to the central abuse hotline of the Department of Children and Families; providing criminal, civil, and administrative immunity to child protective investigators who report known or suspected animal cruelty; authorizing offices of criminal conflict and civil regional counsel to establish a multidisciplinary legal representation model program to serve parents of children in the dependency system; requiring the department to make available specified training for caregivers on the life skills necessary for children in out-of-home care; revising prohibitions relating to sexual conduct and sexual contact with an animal, etc. CF 03/02/2021 Fav/CS AP 03/11/2021 Favorable RC 03/18/2021 Not Considered	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 18, 2021, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 148 Regulated Industries / Bradley (Compare H 329, S 134)	Beverage Law; Authorizing certain food service establishments to sell or deliver certain alcoholic beverages for off-premises consumption under certain circumstances; providing requirements for such establishments to sell alcoholic beverages for off-premises consumption; requiring that such alcoholic beverages be transported in a specified manner; specifying that certain alcoholic beverages sold by such establishments are not open containers for the purposes of the prohibition on possessing open containers of alcoholic beverages in vehicles, etc. RI 02/16/2021 Fav/CS CM 03/09/2021 Favorable RC 03/18/2021 Not Considered	Not Considered
4	CS/CS/SB 228 Judiciary / Commerce and Tourism / Bradley (Similar CS/H 121)	Notaries Public; Authorizing an employer of a notary public to require the use of a particular technology and provider in performing a notarial act with respect to an electronic record; modifying requirements for entries in the electronic journal maintained by an online notary public; clarifying that an online notary public is entitled to select his or her remote online notarization service provider; clarifying limitations on fees charged for online notarizations, etc. CM 01/25/2021 Fav/CS JU 02/15/2021 Fav/CS RC 03/18/2021 Not Considered	Not Considered
5	CS/SB 286 Regulated Industries / Perry (Identical CS/H 137, Compare H 1209)	Fire Sprinklers; Revising the definition of the term "Contractor V"; authorizing certain fire protection system contractors to design certain systems; revising the definition of the term "fire protection system", etc. RI 03/01/2021 Fav/CS BI 03/10/2021 Favorable RC 03/18/2021 Not Considered	Not Considered
6	CS/SB 354 Judiciary / Harrell (Identical CS/H 495)	Restitution; Providing for the purposes of restitution in a criminal proceeding; providing for the purposes of restitution in a delinquency proceeding; specifying the standards for valuation of a restitution order; authorizing a court to consider hearsay evidence regarding valuation of a restitution award, etc. JU 02/15/2021 Fav/CS CJ 03/02/2021 Favorable RC 03/18/2021 Not Considered	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 18, 2021, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 378 Governmental Oversight and Accountability / Bradley (Similar CS/H 585)	Payment for Construction Services; Increasing the interest rate for certain payments for purchases of construction services; specifying that a person, firm, or corporation who fails to make certain payments relating to public projects commits a misapplication of construction funds and is subject to criminal penalties; increasing the interest rate for overdue payments for the purchase of construction services; expanding the list of actions for which a licensee may be disciplined by the Construction Industry Licensing Board; requiring the board to suspend certain licenses for a minimum period of time under certain circumstances, etc. CA 01/26/2021 Favorable GO 02/17/2021 Fav/CS RC 03/18/2021 Not Considered	Not Considered
8	CS/SB 602 Commerce and Tourism / Burgess (Identical CS/H 339)	Business Organizations; Revising requirements relating to inspecting certain records of limited liability companies; revising the circumstances under which shareholders are entitled to appraisal rights and certain payments; entitling corporations to prepay a shareholder if the shareholder makes a demand for payment; revising requirements for proceedings relating to unsettled demands for payment, etc. CM 02/15/2021 Fav/CS JU 03/02/2021 Favorable RC 03/18/2021 Not Considered	Not Considered
9	CS/SB 702 Judiciary / Thurston (Identical H 253)	Individual Retirement Accounts; Specifying that certain interests received by a transferee after a divorce are exempt from claims of creditors upon being awarded to or received by the transferee; specifying that such interests remain exempt; providing retroactive applicability, etc. BI 02/16/2021 Favorable JU 03/02/2021 Fav/CS RC 03/18/2021 Not Considered	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 18, 2021, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 728 Broxson (Identical H 733)	Credit for Reinsurance; Transferring specified authority and duties relating to credit for reinsurance from the Commissioner of Insurance to the Office of Insurance Regulation; revising the attorney designation requirement in reinsurance agreements with certain assuming insurers under certain circumstances; specifying requirements for assuming insurers and reinsurance agreements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; providing construction, etc. BI 02/16/2021 Favorable JU 03/02/2021 Favorable RC 03/18/2021 Not Considered	Not Considered
11	SB 738 Baxley (Identical H 353)	Bicycle Operation Regulations; Providing an exception to the requirement that a person operating a bicycle ride upon or astride a seat attached thereto, etc. TR 02/16/2021 Favorable CA 03/10/2021 Favorable RC 03/18/2021 Not Considered	Not Considered
12	SB 752 Gruters (Identical H 67)	Public Defender Duties; Specifying additional circumstances under which a public defender may not be appointed to represent a defendant, etc. JU 03/02/2021 Favorable CJ 03/09/2021 Favorable RC 03/18/2021 Not Considered	Not Considered
13	CS/SB 776 Criminal Justice / Gainer (Similar H 783)	Racketeering; Revising the definition of the term "racketeering activity" to include certain actions relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes, etc. CJ 02/16/2021 Fav/CS EN 03/02/2021 Favorable RC 03/18/2021 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 18, 2021, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	CS/SB 890 Criminal Justice / Hooper (Identical CS/H 1541)	Use of Electronic Databases; Increasing the maximum fine imposed on public officers who violate any provision of ch. 119, F.S.; requiring the Criminal Justice Standards and Training Commission to incorporate into the course curriculum required for initial certification of law enforcement officers instruction on the authorized access to and use of personal identification information contained in electronic databases; requiring the commission to adopt rules requiring that each law enforcement officer receive instruction on the authorized access to and use of personal identification information contained in electronic databases for continued employment or appointment as an officer, etc. CJ 02/16/2021 Fav/CS TR 03/03/2021 Favorable RC 03/18/2021 Fav/CS	Fav/CS Yeas 16 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 76

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senators Boyd and Brandes

SUBJECT: Property Insurance

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Arnold</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 76, in broad terms, revises the statutes that govern property insurance policies including attorney fees, roof coverage provisions, notice periods for bringing claims, alternative dispute resolution, lawsuits involving property insurance policies, consolidation of legal actions, and assignment agreements. Additionally, the bill establishes a third degree felony for knowingly aiding or abetting an unlicensed person who transacts or engages in insurance activities without a license. If an unauthorized person provides claims adjusting services, the Department of Financial Services may take administrative action and impose fines for those activities. Finally, the bill requests that the Florida Supreme Court adopt a rule that requires attorneys to submit itemized closing statements in cases where a recovery is made in residential property litigation.

The bill provides that attorney fees will be awarded under a property insurance policy or a surplus lines policy using the “lodestar” calculation, which is determined by multiplying the number of hours reasonably worked by a reasonable hourly rate for an attorney of the insured or beneficiary. The strong presumption that the lodestar fee is sufficient and reasonable may only be rebutted in rare and exceptional circumstances when competent counsel could not be found. Attorney fees will also be awarded to a claimant using the demand-judgment quotient which is determined by dividing the amount of the judgment by the amount of the demand. Award ratios for recovery are stated in statute.

The bill allows an insurer to offer homeowner's insurance policies that adjust claims on roofs 10-years old or older on the basis of a roof surface reimbursement schedule without also having to offer a policy that provides replacement cost adjustment for such a roof. The roof surface reimbursement schedule must provide for repair, replacement, and installation based on the annual age of the roof and the roof surface type. In the event of a total loss, the insurer's liability will be for the amount of the insured property as specified in the personal lines residential property insurance policy, as provided for in Florida's Valued Policy Law.

The bill reduces from 3 years to 2 years the time allowed for an insured to file a property insurance claim, supplemental claim, or reopened claim including a claim issued by a surplus lines insurer.

A property insurance policy may require the policyholder and an assignee of the policy benefits to participate in mediation, if requested by the insurer.

The bill creates s. 627.70152, F.S., governing suits brought by an insured or assignee arising under a property insurance policy. Claimants must provide notice prior to the filing of a lawsuit and make a presuit demand. Insurers may file to abate proceedings until notice has been perfected or where their rights to inspect are infringed.

When a court receives notice of multiple legal actions arising from the same residential property insurance policy, property, and owners, it may consolidate and transfer jurisdiction to a court having proper jurisdiction based on the total amount in controversy of all of the consolidated claims. The parties have a duty to notify the court of the multiple actions so that consolidation and transfer may occur.

Finally, the bill establishes that the provisions of an assignment agreement, while currently provided to the insurer, must also be provided and delivered to the named insured. Additionally, an assignment agreement does not modify or eliminate the right of an insurer to communicate directly with the named insured if the insured is not represented by counsel.

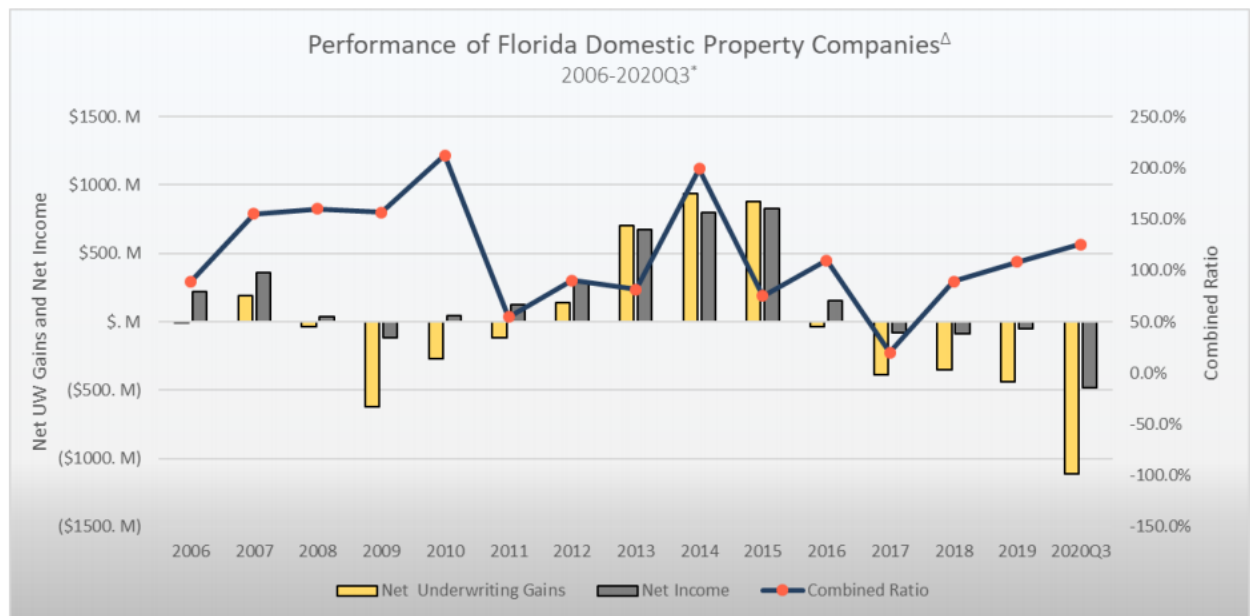
The bill takes effect July 1, 2021.

II. Present Situation:

Florida Residential Property Insurance Market Data

According to the Florida Office of Insurance Regulation (OIR), Florida domestic property insurers are likely to double their losses from 2019 to 2020. The resulting combined ratios¹ are near or above 100 percent for the third year since 2017 and net underwriting losses have continued for the fifth year since 2015. Figure 1 below displays both the combined ratios and net underwriting gains (losses) of domestic property insurers between 2006 and the third quarter of 2020.

¹ The combined ratio is the sum of the expense ratio and the loss ratio. A combined ratio below 100 percent indicates underwriting profits, whereas a combined ratio above 100 percent indicates underwriting losses.

Figure 1. Financial Performance of Florida's Domestic Property Market.²

^Δ The domestic companies do not include Citizens Property Insurance Corporation. The data is from financial statements submitted to the National Association of Insurance Commissioners.

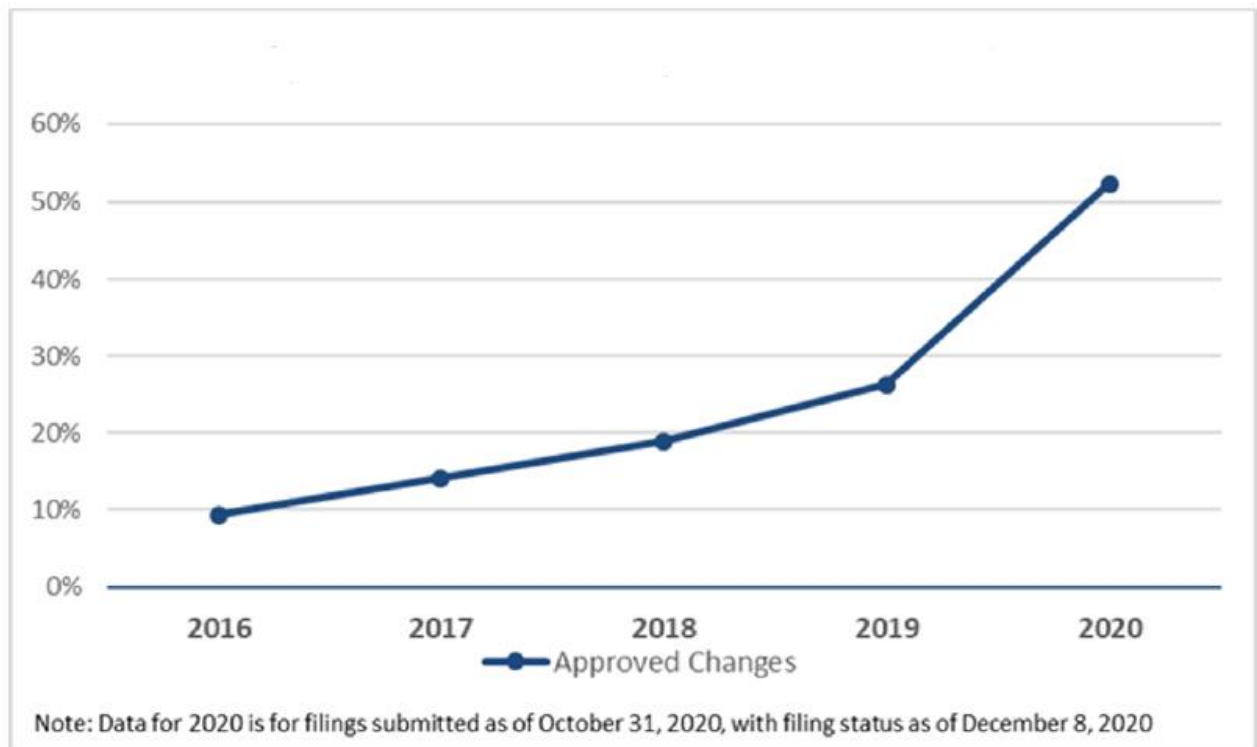
OIR similarly reports an increasing trend of domestic property insurers filing for rate increases. Insurers submitted 105 rate filings in 2020 for increases of 10 percent or more, with OIR approving 55 of those filings. In 2016, OIR approved only 6 rate increases of at least 10 percent.³ Figure 2 below displays the percentage of approved filings for rates increases above 10 percent between 2016 and December 8, 2020.

Figure 2. OIR-Approved Property Insurance Rate Increases Greater than 10 Percent.⁴

² Data provided by the Florida Office of Insurance Regulation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet).
https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 27, 2021).

³ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁴ Data provided by the Florida Office of Insurance Regulation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet).
https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 27, 2021).



In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic property insurance market:

- Claims with litigation;
- Claims solicitation; and
- Adverse loss reserve development.⁵

In 2020, OIR conducted a data call of Florida's domestic property insurers.⁶ According to the State Insurance Commissioner, the data call showed that the severity of non-weather water claims with litigation is nearly double claims that are closed without litigation.⁷ Figure 3 below displays the claims severity disparity between non-weather water claims with litigation and such claims without litigation between the fourth quarter of 2017 and the first quarter of 2020.

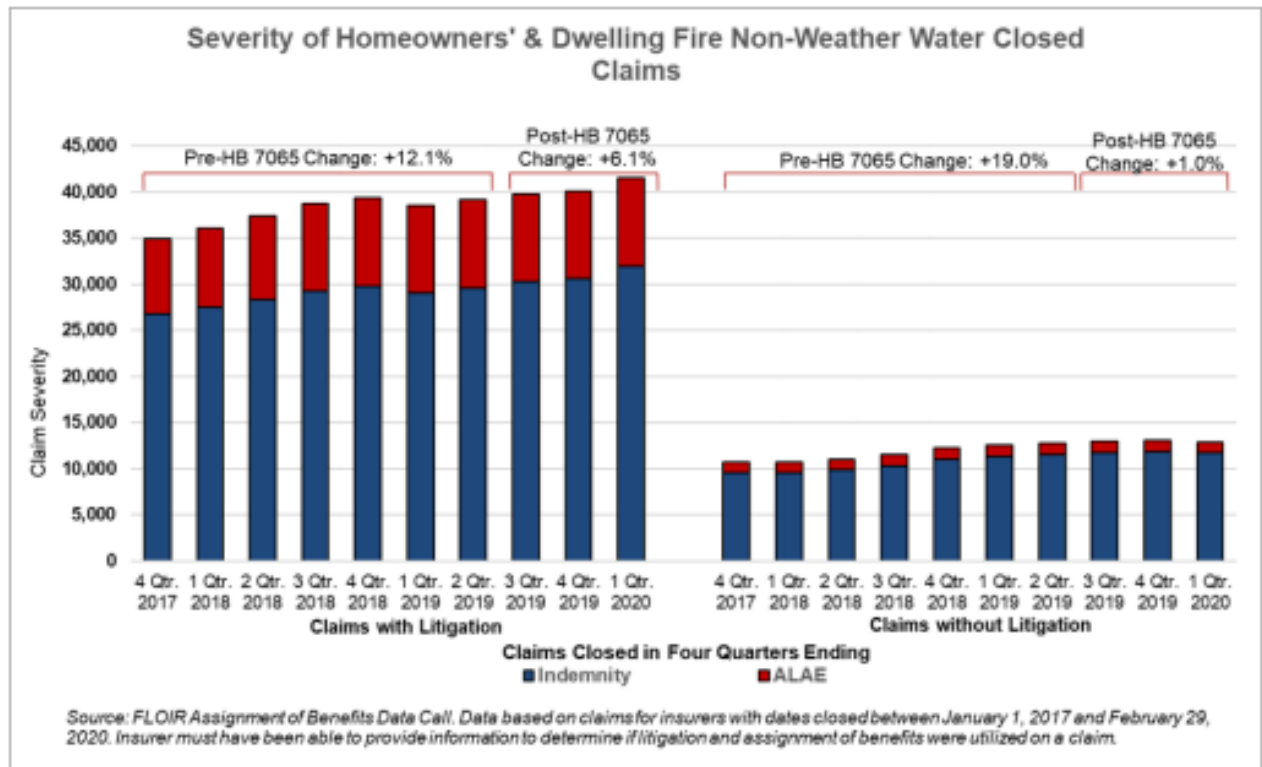
*Figure 3. Severity of Claims with Litigation versus Claims without Litigation.*⁸

⁵ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁶ <https://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last visited Jan. 27, 2021).

⁷ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁸ Data provided by the Florida Office of Insurance Regulation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet) https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 27, 2021).



According to OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.⁹ Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or at the time of its final disposal.¹⁰ When adverse loss reserve development occurs, the claim costs more than its reserve was originally estimated by the insurer. The table below displays the adverse loss reserve development of Florida's domestic property insurers. The 1-year and 2-year look-backs periods for calendar years 2018 and 2019 show claims costing \$241-\$682 million more than their corresponding loss reserves.

Florida Domestic Property Insurance Market Adverse Loss Reserve Development¹¹		
Year	1-Year Look-Back	2-Year Look-Back
2018	\$418 million	\$241 million
2019	\$422 million	\$682 million

Figure 4 below provides another look at the increasing multi-year trend, displaying adverse loss reserve development between 2015 and 2019.

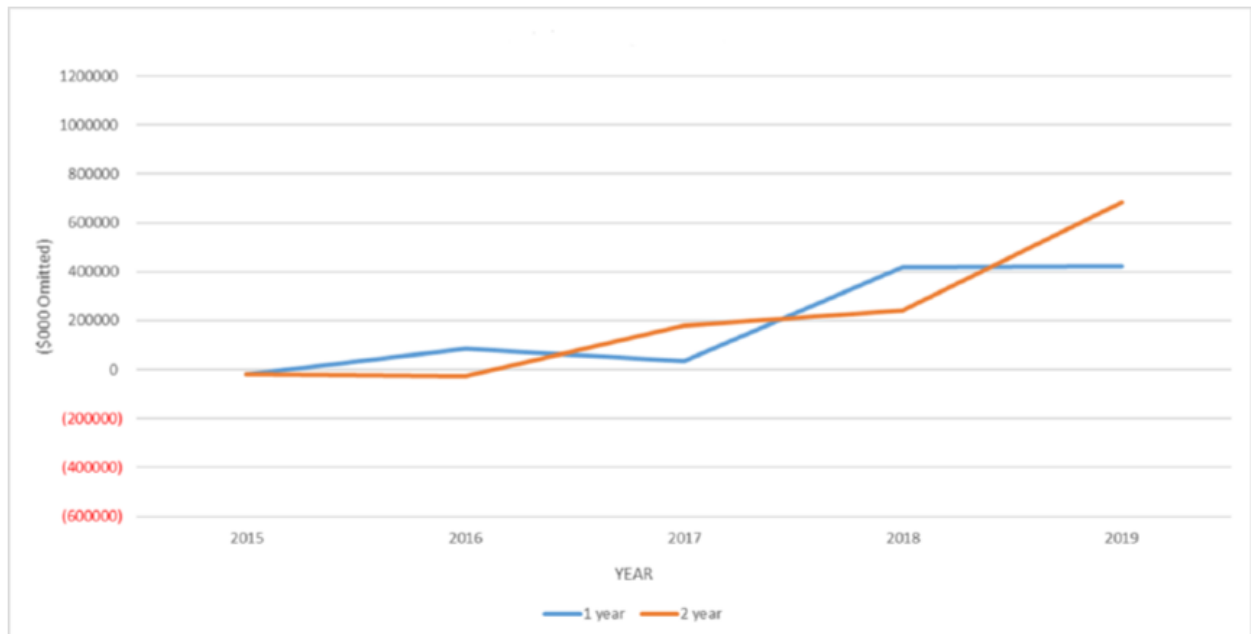
Figure 4. Loss Reserve Development in Florida's Domestic Property Insurance Market¹²

⁹ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation)

¹⁰ International Risk Management Institute, *Glossary*, <https://www.irmi.com/term/insurance-definitions/loss-development> (last visited Jan. 27, 2021).

¹¹ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

¹² Data provided by the Florida Office of Insurance Regulation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet)



OIR and Citizens Property Insurance Corporation (Citizens) have also analyzed the contribution of claims volume following a loss to the multi-year adverse loss reserve development present in Florida's domestic property insurance market. Following the expiration of the 3-year claims filing deadline for Hurricane Irma in September 2020, Citizens analyzed the development of claims by Citizens policyholders related to Hurricane Irma.¹³ Citizens' analysis shows that almost 90 percent of total claims were filed within 2 years after a Hurricane Irma-related loss. The analysis further demonstrates that, as the 3 year claim-filing deadline approached, significantly more claims were filed with legal representation at the first notice of loss. The percentage of claims filed with legal representation at the first notice of loss increased from 10.3 percent in 2017 to 43.1 percent in 2018. However, the claims increased to 63.3 percent and 64.5 percent in years 2019 and 2020, respectively.

Citizens Hurricane Irma-Related Claims ¹⁴				
Year Filed	Total Filed	% of Total Irma Claims Filed	Total Filed w/ Representation at First Notice of Loss	% Filed w/ Representation at First Notice of Loss
2017	61,677	79.8%	6,393	10.3%
2018	7,579	9.8%	3,269	43.1%
2019	4,374	5.7%	2,769	63.3%

https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 27, 2021).

¹³ Data provided by Citizens Property Insurance Corporation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet)
https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 14, 2021).

¹⁴ Data provided by Citizens Property Insurance Corporation to the Senate Committee on Banking and Insurance on January 12, 2021 (Senate Meeting Packet)
https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf (last visited Jan. 14, 2021).

2020*	3,645	4.7%	2,352	64.5%
Total	77,275	100.0%	14,783	19.1%

As of October 28, 2020

*The 3-year claims filing deadline for Hurricane Irma occurred in September 2020.

Following the expiration of the 3-year claims filing deadline for Hurricane Irma in September 2020, OIR analyzed the development of claims by all domestic property policyholders related to Hurricane Irma. Similarly to the Citizen’s analysis, OIR shows more than 90 percent of total claims were filed within 2 years of experiencing a Hurricane Irma-related loss.

Hurricane Irma-Related Claims in Florida¹⁵		
Data Call	Total Filed	% of Total Irma Claims Filed
November 2018	1,002,821	89.1%
January 2020	60,014	5.3%
November 2020	62,753	5.6%
Total	1,125,588	100.0%

Awarding Attorney Fees in Litigation

In most United States jurisdictions, each party to the litigation pays its own attorney, regardless of the outcome of the litigation, and a court may only award attorney fees to the prevailing side if authorized by statute or agreement of the parties to the litigation.¹⁶ This is often referred to as the “American Rule” for attorney fees, and contravenes the “English Rule” under which English courts generally awarded attorney fees to the prevailing party in litigation.¹⁷

Florida has enacted a number of statutes that authorize courts to award attorney fees in civil litigation. As the Florida Supreme Court has noted, these statutory provisions generally fall into two categories.¹⁸ In the first category, statutes direct a court to assess attorney fees against only one side in certain types of actions. An example is found in s. 627.428, F.S., which directs the court to assess reasonable attorney fees against the insurer and in favor of the insured or a beneficiary who prevails in litigation. The second category follows the English Rule and authorizes the prevailing party, whether it is the plaintiff or the defendant, to recover its attorney fees from the opposing party. An example is found in the recently enacted s. 627.7152, F.S., which directs the court to award an attorney fee to the statutorily defined prevailing party in assignment of benefits litigation under a residential or commercial property insurance policy.

¹⁵ Email from Allison Hess Sitte, Director of Government Affairs, Florida Office of Insurance Regulation (January 26, 2021).

¹⁶ *Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1147-1148, (Fla. 1985).

¹⁷ *Id.*

¹⁸ *Id.*

Attorney Fees Arising from Insurance Litigation

Section 627.428, F.S., allows an insured to recover attorney fees if he or she prevails in a lawsuit against the insurer to enforce an insurance policy. Some version of this statute has been the law in Florida since at least 1893.¹⁹ The statute provides, in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.²⁰

The Florida Supreme Court recently explained the purpose of the statute:

The need for fee and cost reimbursement in the realm of insurance litigation is deeply rooted in public policy. Namely, the Legislature recognized that it was essential to “level the playing field” between the economically-advantaged and sophisticated insurance companies and the individual citizen. Most assuredly, the average policyholder has neither the finances nor the expertise to single-handedly take on an insurance carrier. Without the funds necessary to compete with an insurance carrier, often a concerned policyholder's only means to take protective action is to hire that expertise in the form of legal counsel For this reason, the Legislature recognized that an insured is not made whole when an insurer simply grants the previously denied benefits without fees. The reality is that once the benefits have been denied and the plaintiff retains counsel to dispute that denial, additional costs that require relief have been incurred. Section 627.428, F.S., takes these additional costs into consideration and levels the scales of justice for policyholders by providing that the insurer pay the attorney's fees resulting from incorrectly denied benefits.²¹

Florida courts have broadly interpreted the statute to allow recovery of fees when the insurer ultimately settles the case before trial.²² A finding of bad faith on the part of the insurer is not a necessary precondition for the award of fees under the statute.²³

¹⁹ See *Tillis v. Liverpool & London & Globe Insurance Company*, 35 So. 171 (Fla. 1903) (rejecting an insurance company argument that the 1893 law providing that an insured may recover attorney fees in actions against an insurance company to enforce a policy violates due process and equal protection).

²⁰ Section 626.9373, F.S., contains substantially similar language but it applies to surplus lines insurers. Florida courts have interpreted the statutes to have the same meaning.

²¹ *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207, 1215-1216 (Fla. 2016) (internal citations omitted).

²² *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207, 1215 (Fla. 2016) (Noting that “it is well settled that the payment of a previously denied claim following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment”).

²³ *Insurance Co. of North America v. Lexow*, 602 So. 2d 528, 531 (Fla. 1992) (“We reject the argument that attorney's fees should not be assessed against INA because this dispute involved a type of claim which reasonably could be expected to be resolved by a court. INA's good faith in bringing this suit is irrelevant. If the dispute is within the scope of s. 627.428, F.S., and the insurer loses, the insurer is always obligated for attorney's fees”).

Lodestar Calculation

Florida courts determine reasonable attorney fees by using the federal “lodestar” calculation. This is computed by multiplying the number of hours reasonably expended on a case by a reasonable hourly rate.²⁴ In adopting a “suitable foundation for an objective structure” for the award of attorney fees, the Court explained in *Fla. Patient’s Comp. Fund v. Rowe*, that:

There is but little analogy between the elements that control the determination of a lawyer’s fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney’s fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.²⁵

In calculating the lodestar amount under *Rowe*, courts must consider the following elements:

- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service.
- The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- The fee customarily charged in the locality for similar legal services.
- The amount involved and the results obtained.
- The time limitations imposed by the client or by the circumstances.
- The nature and length of the professional relationship with the client.
- The experience, reputation, and ability of the lawyer or lawyers performing the services.
- Whether the fee is fixed or contingent.²⁶

Contingency Fee Multipliers – Florida Court Discretion to Apply a Contingency Fee Multiplier and the Contingency Fee Multiplier Schedule

Florida courts have discretion to consider whether applying a contingency fee multiplier to the produced lodestar amount is appropriate.²⁷ However, before determining that a multiplier is warranted, a court must consider whether:

- The relevant legal market requires a contingency fee multiplier for a plaintiff to be able to obtain competent counsel.
- The attorney was able, in any way, to mitigate the risk of nonpayment.

²⁴ *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985).

²⁵ *Id.* at 1149 (quoting *Baruch v. Giblin*, 122 Fla. 59, 63, 164 So. 831, 833 (1935)).

²⁶ *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985).

²⁷ *Joyce v. Federated National Insurance Company*, 228 So. 3d 1122, 1124, 1128 (Fla. 2017) (quoting *Standard Guaranty Ins. Co. v. Quanstrom* 555 So. 2d 828, 834 (Fla. 1990)).

- Any of the factors established in *Rowe* are applicable, particularly the amount involved, the results that were obtained, and the type of fee arrangement agreed to between the client and the attorney.²⁸

When a court concludes that the presented evidence supports utilization of a multiplier, courts may use the following multiplier schedule, established in the 1990 *Quanstrom* ruling.²⁹

Contingency Fee Multiplier	Case's Likelihood of Success at Outset
1.0 to 1.5	More likely than not.
1.5 to 2.0	Approximately even.
2.0 to 2.5	Unlikely.

After the Florida Supreme Court adopted this approach in *Rowe*, the United States Supreme Court issued decisions rejecting and limiting the use of contingency fee multipliers in federal cases. In response, the Florida Supreme Court has reaffirmed Florida precedent and the underlying public policy reasoning for the use of contingency fee multipliers as articulated in *Rowe* on multiple occasions.

Federal Precedent Limiting the Use of Contingency Fee Multipliers

After the Florida Supreme Court's 1985 decision in *Rowe*, Justice Scalia, writing the majority opinion in *City of Burlington v. Dague*, couched his disapproval of contingency fee multipliers by reasoning that the multipliers incentivize nonmeritorious claims, so that those claims are effectively raised as often as meritorious claims:

[T]he consequence of awarding contingency enhancement to take account of this “merits” factor would be to provide attorneys with the same incentive to bring relatively meritless claims as relatively meritorious ones. Assume, for example, two claims, one with underlying merit of 20 percent, the other of 80 percent. Absent any contingency enhancement, a contingent-fee attorney would prefer to take the latter, since he is four times more likely to be paid. But with a contingency enhancement, this preference will disappear: the enhancement for the 20 percent claim would be a multiplier of 5 (100/20), which is quadruple the 1.25 multiplier (100/80) that would attach to the 80 percent claim. Thus, enhancement for the contingency risk posed by each case would encourage meritorious claims to be brought, but only at the social cost of indiscriminately encouraging nonmeritorious claims to be brought as well. We think that an unlikely objective of the “reasonable fees” provisions.³⁰

Building on *Dague*, the U.S. Supreme Court in *Perdue* further limited the use of contingency fee multipliers, reserving them for “rare and exceptional circumstances” in which the lodestar insufficiently accounts for a factor that may properly be considered in determining a reasonable

²⁸ *Id.*

²⁹ *Joyce*, 228 So. 3d at 1125.

³⁰ *City of Burlington v. Dague*, 505 U.S. 557, 563 (1992).

fee.³¹ Such circumstances “require specific evidence that the lodestar fee would not have been ‘adequate to attract competent counsel.’”³²

Florida Precedent Approving the Use of Contingency Fee Multipliers

The Florida Supreme Court has rejected the U.S. Supreme Court’s reasonings in *Dague* and *Perdue* on multiple occasions. Beginning with *Bell*, the Court reaffirmed the *Rowe* rationale for contingency fee multipliers, explaining:

[W]e find that the primary policy that favors the consideration of the multiplier is that it assists parties with legitimate causes of action or defenses in obtaining competent legal representation even if they are unable to pay an attorney on an hourly basis. In this way, the availability of the multiplier levels the playing field between parties with unequal abilities to secure legal representation.³³

In *Lane*, the Court similarly noted the role full contingency fee cases, generally, and partial contingency fee cases, specifically, play in providing access to the court system:

Attorneys should be encouraged to take cases based on a partial contingency-fee arrangement, since this policy also will encourage attorneys to provide services to persons who otherwise could not afford the customary legal fee. No incentive would exist under the approach taken by the district court below, because no “enhancement” of the customary fee would be given to offset losses.³⁴

More recently, the Florida Supreme Court has rejected the “rare and exceptional” standard articulated in *Perdue*. In *Joyce*, the Court held there is no “rare and exceptional” circumstances requirement before a court can apply a contingency fee multiplier.³⁵ *Joyce* also reaffirmed *Rowe*, *Quanstrom*, and *Bell*. Moreover, Justice Pariente, writing for the majority, criticized Justice Scalia’s reasoning from the majority opinion in *Dague*, arguing that Justice Scalia wrongly conflated nonmeritorious claims with claims that are unlikely to prevail in arguing that multipliers incentivize the pursuit of nonmeritorious claims.³⁶

Additional Statutes Applicable to the Award of Attorney Fees in Property Insurance Litigation

Section 627.428, F.S., generally governs the award of attorney fees in civil litigation under a property insurance policy. There are circumstances, however, where the insurer may obtain attorney fees from an insured. These circumstances include when litigation is brought by an assignee of benefits under a residential property insurance policy, when a claimant brings an action that has no good faith legal or genuine factual basis, or in certain circumstances when the insurer’s offer of settlement is refused.

³¹ *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 543 (2010).

³² *See id.* at 543.

³³ *Bell v. U.S.B. Acquisition Co. Inc.*, 734 So.2d 403, 411 (Fla. 1999).

³⁴ *Lane v. Head*, 566 So. 2d 508, 511 (Fla. 1990).

³⁵ *Joyce v. Federated National Insurance Company*, 228 So.3d 1122, 1135 (Fla. 2017).

³⁶ *Id.* at 1132-33.

Attorney Fees Arising from Assignment of Benefits

Section 627.7152, F.S., prevents recovery of “one way” attorney fees under s. 627.428, F.S., for assignees of post-loss benefits under a residential property insurance policy or commercial property insurance policy, and instead provides a formulaic means by which either party may recover attorney fees.³⁷ An award of attorney fees is based on the difference between the judgment obtained and the presuit settlement offer. Fees are awarded as follows:

- If the difference between the judgment obtained and the presuit offer is less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees.
- If the difference between the judgment obtained and the presuit offer is at least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees.
- If the difference between the judgment obtained and the presuit offer is at least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.³⁸

Attorney Fees Arising from Unsupported Claims, Defenses, or Delays

Section 57.105, F.S., provides the court with authority to award attorney fees, including prejudgment interest, to the prevailing party if the court finds the losing party or losing party’s attorney brought a civil claim or raised a defense in a civil cause of action that has no good faith legal or genuine factual basis. The court may also award attorney fees if the opposing party took any action, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, for the primary purpose of unreasonable delay.³⁹

Attorney Fees Arising from Offers of Judgment

Section 768.79, F.S., provides for attorney’s fees where a party’s offer to settle a case has been rejected. The statute states, in part:

(1) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney’s fees incurred by her or him ... if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer.... If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney’s fees....

An offer must:

- Be in writing and state that it is being made pursuant to this section;
- Name the party making it and the party to whom it is being made;
- State with particularity the amount offered to settle a claim for punitive damages, if any; and
- State its total amount.⁴⁰

³⁷ Section 627.7152(10)(a), F.S.

³⁸ *Id.*

³⁹ Section 57.105(1) and (2), F.S.

⁴⁰ Section 768.79(2), F.S.

When determining the reasonableness of an award of attorney fees, the court must consider the following factors along with other relevant criteria:

- The then merit or lack of merit in the claim;
- The number and nature of offers made by the parties;
- The closeness of questions of fact and law at issue;
- Whether the person making the offer had unreasonably refused to furnish information necessary to evaluate the reasonableness of such offer;
- Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties; and
- The amount of the additional delay cost and expense that the person making the offer reasonably would be expected to incur if the litigation should be prolonged.

Section 768.79(7)(a), F.S., allows the court discretion to disallow an award of costs and attorney fees to the prevailing party if it is determined the prevailing party did not make the offer in good faith.

Property insurance litigation is subject to both s. 627.428, F.S., and s. 768.79, F.S.⁴¹ Florida courts will apply both statutes to the same litigation with s. 627.428, F.S. governing the award of attorney fees prior to the insurer making an offer of judgment, while both s. 627.428, F.S., or s. 768.79, F.S., apply to the award of attorney fees after an offer of judgment is made, depending on how much the insured recovers. The Florida Supreme Court in *State Farm Mut. Auto Ins. Co. v. Nichols* explained how the two statutes interact in different circumstances by including the following chart in its opinion:⁴²

If the judgment is:	The insured receives:	The insurer receives:
No liability	No fees	Post-offer fees under the offer of judgment statute.
75 percent or less of the insurer's offer	Pre-offer fees under s. 627.428, F.S.	Post-offer fees under the offer of judgment statute.
More than 75 percent of the insurer's offer, but not more than 100 percent	Pre-offer fees under s. 627.428, F.S.	No fees.
More than the insurer's offer	All fees under s. 627.428, F.S.	No fees.

Replacement Cost and Actual Cash Value Loss Settlement Provisions

There are two primary settlement options available when purchasing a homeowner's property insurance policy: *replacement cost* and *actual cash value*. Replacement cost is usually defined in the policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation.⁴³ Replacement cost is designed to cover the difference between what the property is actually worth and what it would cost to rebuild or repair

⁴¹ See *Pennsylvania Lumbermans Mut. Ins. Co. v. Sunrise Club Inc.*, 711 So.2d 593 (Fla. 3rd DCA 1998).

⁴² 932 So.2d 1067 at 1074 (Fla. 2006).

⁴³ National Association of Insurance Commissioners, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Mar. 1, 2021).

that property.⁴⁴ Following a covered loss, the insurer assumes the full cost of repairing or replacing the damaged property.⁴⁵

By contrast, actual cash value is the cost to repair or replace the damaged property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age.⁴⁶ Following a covered loss, the insured assumes the cost to cover the difference between the depreciated value of the damaged property and the cost of repairing or replacing it.

Florida law currently requires that insurers writing homeowner's property insurance policies, offer adjustment to the dwelling, including the roof, on the basis of replacement cost.⁴⁷ The Florida Office of Insurance Regulation will approve policy forms that adjust roof losses on the basis of actual cash value, or the depreciated value of the roof. The insurer must, however, also offer replacement cost adjustment on the roof before issuing the policy.

Roof Surface Payment Schedules

Roof surface payment schedules, sometimes referred to in residential property insurance policies as roof surfacing loss percentage tables, are depreciation tables that state upfront in either the individual policy or endorsement the cost the insurers will assume following a covered loss, expressed as a percentage of the loss amount. The depreciation rates in a roof surface payment schedule generally vary by the age of the roof and type of roof to account for differences in estimated roof lifespans based on roof surface material type.

The roof surface payment schedule example below from Nevada demonstrates the variance in depreciation rates between roof surface material type over time.

Roof Surface Payment Schedule⁴⁸								
The percentages shown for the type of roofing surface are applied to all components and installation including overhead, profit, labor, taxes, and fees associated with the replacement of the roofing system.								
Age of Roof in Years	Roof Surface Material Type							
	Class 3 or 4 Impact Resistant, Synthetic, Plastic, or Architectural	All Other Composition or Solar Shingles	Wood Shingles or Shakes	Metal Shingles or Panels	Concrete Tile, Fiber Cement Tile, or Clay Tile	Slate	Built-up Tar With or Without Gravel, Rubber, Membrane, or Other Flat Roof Surface	All Other Roof Types

⁴⁴ See *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433, 438 (Fla. 2013) (quoting *State Farm Fire & Cas. Co. v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994))

⁴⁵ Insureds that elect for adjustment on the basis of replacement cost receive greater coverage than adjustment on the basis of actual cash value because depreciation is not excluded from replacement cost, whereas it is generally excluded from actual cash value. See *Trinidad* at 438 (quoting *Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684, 689 (Fla. 2d DCA 2008))

⁴⁶ National Association of Insurance Commissioner, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited March 1, 2021).

⁴⁷ Section 627.7011(1), F.S.

⁴⁸ Nevada Division of Insurance, *American Family Insurance Group – HO 88 02 01 14: Roof Surface Payment Schedule*, http://doi.nv.gov/uploadedFiles/doinvgov/public-documents/Consumers/Home/American_Family/HO_88_02_01_14.pdf (last visited Mar. 1, 2021).

	Composition Shingles							
0	100%	100%	100%	100%	100%	100%	100%	100%
1	97%	96%	97%	98%	98%	99%	95%	95%
2	94%	92%	94%	96%	96%	98%	90%	90%
3	91%	88%	91%	94%	94%	97%	85%	85%
4	88%	84%	88%	92%	92%	96%	80%	80%
5	85%	80%	85%	90%	90%	95%	75%	75%
6	82%	76%	82%	88%	88%	94%	70%	70%
7	79%	72%	79%	86%	86%	93%	65%	65%
8	76%	68%	76%	84%	84%	92%	60%	60%
9	73%	64%	73%	82%	82%	91%	55%	55%
10	70%	60%	70%	80%	80%	90%	50%	50%
11	67%	56%	67%	78%	78%	89%	45%	45%
12	64%	52%	64%	76%	76%	88%	40%	40%
13	61%	48%	61%	74%	74%	87%	35%	35%
14	58%	44%	58%	72%	72%	86%	30%	30%
15	55%	40%	55%	70%	70%	85%	*****	*****
16	52%	36%	52%	68%	68%	84%		
17	49%	32%	49%	66%	66%	83%		
18	46%	28%	46%	64%	64%	82%		
19	43%	**	43%	62%	62%	81%		
20	40%		40%	60%	60%	80%		
21	37%		37%	58%	58%	79%		
22	34%		34%	56%	56%	78%		
23	31%		31%	54%	54%	77%		
24	28%		28%	52%	52%	76%		
25	*		*	50%	50%	75%		
26				48%	48%	74%		
27				46%	46%	73%		
28				44%	44%	72%		
29				42%	42%	71%		
30				***	***	****		

* 25% payable for 25 years or over; ** 25% payable for 19 years or over; *** 40% payable for 30 years or over; **** 70% payable for 30 years or over; ***** 25% payable for 15 years or over

Valued Policy Law

Florida's Valued Policy Law (VPL)⁴⁹ has been in effect since 1899 and requires the insurer to set the value of the insured property in the event of a total loss.⁵⁰ In the event of a total loss caused by a covered peril, where the covered peril alone would have caused the loss, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid.⁵¹ However, in the event of total loss caused in part by a covered peril and in part by a

⁴⁹ Section 627.702, F.S.

⁵⁰ *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 818 (Fla. 2007).

⁵¹ Section 627.702(1)(a), F.S.

noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril.⁵²

Florida's VPL currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril. While it does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

First-Party and Third-Party Litigation under Residential Property Insurance Contracts

Under Florida law, first- and third-party litigants under a property insurance contract are sometimes subject to different sets of statutory and case law and procedural requirements.

Time Limits for Filing Claims and Statute of Limitations

Section 627.70132, F.S., currently requires insureds to notify an insurer of a claim, supplemental claim, or reopened windstorm or hurricane 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.⁵³

Insurer's Duty to Respond to, Investigate, and Pay or Deny a Filed Claim

The insurer must acknowledge a filed claim within 14 days of its submission.⁵⁴ When requested in writing by the insured, the insurer must confirm the claim is either covered in full, partially covered, denied, or being investigated within 30 days of the insured providing a proof-of-loss statement.⁵⁵ Within 90 days of receiving notice of the initial, reopened, or supplemental claim, the insurer must either pay the claim in full, pay a portion of the claim, or deny the claim.⁵⁶

Statutory and Common Law Bad Faith

Florida's bad faith law and jurisprudence were designed to hold insurers accountable for failing to fulfill their contractual obligation to indemnify the insured or beneficiary on a valid claim.⁵⁷ Florida recognizes two distinct bad faith causes of action that may be initiated against an insurer. In the first, s. 624.155, F.S., provides first-party and third-party statutory bad faith causes of action against an insurer. Here, bad faith is statutorily defined as the commission of any of the following acts by the insurer:

⁵² Section 627.702(1)(b), F.S.

⁵³ Section 95.11(2)(e), F.S.

⁵⁴ Section 627.70131(1)(a), F.S.

⁵⁵ Section 627.7142, F.S.

⁵⁶ Section 627.70131(5)(a), F.S.

⁵⁷ *Harvey v. GEICO General Insurance Company*, 251 So.3d 1, 6, (Fla. 2018)(quoting *Berges v. Infinity Insurance Company*, 896 So.2d 665 at 682).

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.⁵⁸

The second recognized bad faith cause of action provides a third-party common law cause of action when an insurer fails in good faith to settle a third party's claim against the insurer within policy limits and exposes the insured to liability in excess of his or her insurance coverage.⁵⁹ Florida courts do not recognize a common law first-party bad faith causes of action by the insured against its own insurer.⁶⁰ Most property insurance claims are first-party claims⁶¹, thus bad faith actions on such claims may proceed only pursuant to s. 624.155, F.S.

Presuit Notice to Initiate Litigation

As a condition precedent to bringing a bad faith cause of action under s. 624.155, F.S., the insured must have provided the insurer and the Department of Financial Services at least 60 days written notice of the alleged violation.⁶² The civil remedy notice must specify the following information:

- The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated;
- The facts and circumstance giving rise to the violation;
- The name of any individual involved in the violation;
- A reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third-party claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request; and
- A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized under s. 624.155, F.S.⁶³

The 60-day window contemplated under s. 624.155, F.S., provides insurers with a final opportunity to comply with their claim-handling obligations when a good-faith decision by the insurer would indicate that contractual benefits are owed.⁶⁴

By contrast, as a condition precedent to bring a third-party cause of action to enforce an assignment agreement against the insurer under s. 627.7152(9), F.S., the assignee must provide

⁵⁸ Section 624.155(1)(b)(1)-(3), F.S.

⁵⁹ *Opperman v. Nationwide Mutual Fire Insurance Company*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

⁶⁰ *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 58-59 (Fla. 1995).

⁶¹ Homeowners insurance provides liability coverage, thus third-party litigation may occur under a property insurance policy.

⁶² Section 624.155(3), F.S.

⁶³ Section 624.155(3)(b)(1)-(5), F.S.

⁶⁴ See *Talat Enterprises, Inc., v. Aetna Cas. and Sur. Co.*, 753 So.2d 1278, 1284.

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 pursuant to s. 627.70131, F.S.⁶⁵ 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. If required by the insurer, the assignee must further submit to reasonably necessary examinations under oath and recorded statements administered by the insurer,⁶⁶ and participate in appraisal or other alternative dispute resolution methods in accordance with the policy terms,⁶⁷ before bringing a third-party cause of action to enforce an assignment agreement.

Response by the Insurer

If the insurer fails to respond to a civil remedy notice under s. 624.155, F.S., within the 60-day window, there is presumption of bad faith sufficient to shift the burden to the insurer to show why it did not respond.⁶⁸ No action shall lie if the insurer responds within 60 days of receipt of the civil remedy notice by either paying damages or correcting the circumstances giving rise to the claim.⁶⁹

By contrast, the insurer must respond to a third-party cause of action to enforce an assignment agreement under s. 627.7152, F.S., within 10 business days of receipt of the presuit notice to initiate litigation by making a presuit settlement offer or requiring the assignee to participate in appraisal or other alternative dispute resolution method.⁷⁰

Offer of Settlement

Under Florida law, an insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so.⁷¹ In considering whether the insurer has given fair consideration to a settlement offer that is not unreasonable under the facts, Florida courts look to whether there was a realistic opportunity for settlement.⁷²

III. Effect of Proposed Changes:

Unauthorized Insurance Transactions (Section 1)

Section 1 creates a third degree felony for any person who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engages in insurance activities without a license. A

⁶⁵ Section 627.70131, F.S., requires an insurer to make a coverage determination and pay or deny a claim within 90 days of receipt of the claim

⁶⁶ Section 627.7152(4)(d), F.S.

⁶⁷ Section 627.7152(4)(e), F.S.

⁶⁸ *Fridman v. Safeco Ins. Co. of Illinois*, 185 So.3d 1214, 1220, (Fla. 2016); *Imhof v. Nationwide Mut. Ins. Co.*, 643 So.2d 617, 619 (Fla 1994).

⁶⁹ *Id.*

⁷⁰ Section 627.7152(9)(b), F.S.

⁷¹ *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980).

⁷² *Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).

third degree felony is punishable by a term of up to 5 years in state prison and a fine that does not exceed \$5,000.⁷³

Claims Adjusting (Section 2)

Section 2 defines “claims adjusting”⁷⁴ and provides that, except for a duly licensed attorney at law as exempted under s. 626.860, F.S., or an agent as exempted under s. 626.862, F.S., a person may not provide claims adjusting services unless he or she is licensed and appointed as an adjuster. The Department of Financial Services may take administrative action and impose fines against anyone who performs claims adjusting, soliciting, marketing, or any other services as defined by this section or the section applying to a public adjuster in s. 626.854, F.S., who is not properly licensed.

Attorney Fees (Sections 3 and 4)

Surplus Lines

Section 3 amends s. 626.9373, F.S., which governs the award of attorney fees against a surplus lines insurer. The bill creates a strong presumption that a lodestar fee is sufficient and reasonable in claims arising under a property insurance policy issued by a surplus lines carrier. (The lodestar fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate for the services of the attorney.) This presumption may be rebutted in rare and exceptional circumstances when evidence is presented that competent counsel could not be retained in a reasonable manner.

The bill also provides an attorney fee calculation framework, called the demand-judgment quotient, for use in a suit involving a property insurance policy issued by a surplus lines carrier. The demand-judgment quotient is defined as the quotient obtained by dividing the judgment by the demand.

- If the demand-judgment quotient is greater than or equal to 0.8, the full amount of incurred attorney fees may be awarded.
- If the demand-judgment quotient is equal to or greater than 0.2 but less than 0.8, the attorney fees must equal the product of multiplying the incurred attorney fees by the demand-judgment quotient.
- If the demand-judgment quotient is less than 0.2, attorney fees may not be awarded.

⁷³ Sections 775.082(3)(e), F.S., and 775.083(1)(c), F.S.

⁷⁴ Claims adjusting, as defined in the bill, means directly or indirectly:

1. Attempting or undertaking to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract, if such action results in payment to or receipt of money, commission, or any other thing of value by the party or parties rendering such service or persons affiliated with such party or parties; or
2. Soliciting services as described in subparagraph 1. or soliciting an insured or policyholder to file an insurance claim.

(b) The term does not include:

1. Paid services as a spokesperson used as part of a written or an electronic advertisement.
2. Paid services as a photographer or videographer used to capture images of damage.
3. Paid services to inventory personal property or business personal property.
4. Discussion or explanation of a bid for construction or repair services by a licensed contractor under part I of ch. 489, or a subcontractor for a licensed contractor, with a property owner or the insurer of the property.

The bill states that, notwithstanding any other provision of law, when a suit arises under a residential or commercial property insurance policy, attorney fees and costs may be recovered by a claimant only pursuant to this subsection and s. 57.105, F.S., which governs the award of reasonable attorney fees and awards of prejudgment interest to the prevailing party.

Section 3 also provides definitions for claimant, demand, demand-judgment quotient, incurred attorney fees, and judgment.

Other Property Insurance Policies

Section 4 similarly amends s. 627.428., F.S., to create a strong presumption that the lodestar fee is a sufficient and reasonable award of attorney fees in a claim arising under a property insurance policy. This presumption is rebuttable only in rare and exceptional circumstances by evidence that competent counsel could not be retained in a reasonable manner. Only when such evidence is presented to the court could a contingency fee multiplier be applied in property insurance litigation.

Roof Surface Reimbursement Schedules (Section 5)

Section 5 amends s. 627.7011, F.S., to provide for the use of a roof surface reimbursement schedule to limit coverage in a personal lines residential property insurance policy. The roof surface reimbursement schedule must provide for full replacement coverage for any roof surface type less than 10 years old. For roofs 10 years old or older, the roof surface reimbursement schedule must provide for repair, replacement, and installation based on the annual age of the roof surface type, subject to the following minimum reimbursement amounts, unless otherwise actuarially justified and demonstrated to the Office of Insurance Regulation (OIR):

- 70 percent for a metal roof type;
- 40 percent for a concrete tile and clay tile roof type;
- 40 percent for a wood shake and wood shingle roof type;
- 25 percent for all other roof types.

Roof surface reimbursement schedules must allow for actuarially sound rate standards⁷⁵ under Florida's Rating Law,⁷⁶ be subject to OIR approval, be furnished along with the personal lines residential property insurance policy at the time of issuance or renewal, and include the following notice in no smaller than 12-point uppercase and boldfaced type:

PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SERVICE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

⁷⁵ See ch. 627.062, F.S.

⁷⁶ See ch. 627 pt. I, F.S.

The section further provides that, in the event of a total loss caused by a covered peril, actual cash value coverage as determined by the roof surface reimbursement schedule does not apply. The insurer's liability will instead be for the amount of the insured property as specified in the personal lines residential property insurance policy, as provided for in Florida's Valued Policy Law.⁷⁷

Currently, insurers may offer homeowner's insurance policies with roof surface reimbursement schedules approved by the Office of Insurance Regulation, but must also offer policies that provide replacement cost reimbursement. This section removes the requirement to offer replacement cost reimbursement for roofs that are at least 10-years-old.

The bill clarifies that an insurer who is offering a roof reimbursement schedule may also offer a roof reimbursement on the basis of replacement costs such that offering one does not preclude the other.

Additionally, the bill allows an insurer to provide coverage to the roof on a stated value basis. It provides the homeowner with the choice of purchasing limited coverage at the stated value of the coverage. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof. An insurer may limit its offering to the stated value coverage option, but may also offer replacement cost coverage or a roof reimbursement schedule.

Notice of Property Insurance Claim (Section 6)

Section 6 amends s. 627.70132, F.S., to require that a claim, supplemental claim, or reopened claim under a property insurance policy must be provided to the insurer within 2 years of the date of the loss. This reduces the existing time frame by 1 year and applies to all property insurance notices. It is no longer limited to windstorm or hurricane loss or damage and includes a property insurance policy issued by an eligible surplus lines insurer.

Alternative Dispute Resolution Procedure (Section 7)

Section 7 makes a technical change to s. 627.7015(9), F.S., to conform to the revision of s. 627.70132, F.S., above, by deleting a reference to "windstorm or hurricane loss." The bill also authorizes a property insurance policy to require the policyholder or assignee to participate in the Division of Financial Services property insurance mediation program, if requested by the insurer.

Property Insurance Policy Lawsuits (Section 8)

Section 8 creates s. 627.70152, F.S., creating several provisions governing lawsuits arising under a property insurance policy.

⁷⁷ See s. 627.702, F.S.

Application

The section defines the scope of the section as applicable to all first-party and third-party actions brought under a property insurance policy, including an assignee.

Definitions

The bill defines:

- “Assignee” to mean a person who is assigned post-loss benefits through an assignment agreement, by cross-reference to s. 627.7152, F.S.
- “Claimant” to mean an insured or assignee who is filing suit under a property insurance policy.
- “Demand” to mean the specific amount alleged to be owed by the insurer to the claimant under the property insurance policy.
- “Demand-judgment quotient” to mean the quotient obtained by dividing the judgment by the demand.
- “Incurred attorney fees” to mean the total amount of attorney fees supported by sufficient evidence and determined by the court to have been incurred by the claimant in bringing the action.
- “Judgment” to mean damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest.

Presuit Notice Requirements

The claimant must provide the insurer with a written notice of intent to initiate litigation at least 60 days before filing suit under the property insurance policy. Additionally, the notice may not be served before the insurer has made a coverage determination pursuant to s. 627.70131, F.S.⁷⁸

The notice must specify:

- That it is being provided pursuant to this section;
- The alleged acts or omissions of the insurance insurer giving rise to the action;
- The demand amount;
- The amount of the claimant’s attorney fees, calculated as the product of hours worked multiplied by a reasonable hourly rate; and
- If provided by an attorney or other representative, whether a copy of the notice was provided to the claimant.

An assignee bringing a third-party claim must also comply with s. 627.7152, F.S., pertaining to assignment agreements. Concurrent with the notice of intent to initiate litigation, an assignee must also provide the named insured, insurer, and assignor 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.⁷⁹

⁷⁸ Section 627.70131, F.S., requires an insurer to make a coverage determination and pay or deny a claim within 90 days of receipt of the claim.

⁷⁹ This is a current precondition to an assignee filing suit under s. 627.7152(9), F.S.

The claimant must provide the insurer with notice of intent to initiate litigation within the 5-year statute of limitations for property insurance contracts pursuant to s. 95.11, F.S.

Following the insurer's receipt of claimant's notice of intent to initiate litigation, a court must dismiss without prejudice any action commenced by the insurer against the claimant before the expiration of the 60-day notice period.

Admissibility of Notice and Response

Notice and submissions provided pursuant to this section: are admissible as evidence in a civil action or alternative dispute resolution proceeding; do not limit the evidence of attorney fees, damages, or loss which may be offered at trial; and do not relieve any obligation that insured or assignee has to give notice under another other provision of law.

Right to Inspect

The insurer may request to inspect, photograph, or evaluate the property that is the subject of the claim in a reasonable manner and at a reasonable time within 30 days of receipt of the notice of intent to initiate litigation. If reasonably possible, the insurer must complete the inspection, photography, and evaluation within 60 days of receipt of the notice of intent to initiate litigation. The insurer must then fairly and promptly evaluate the claim after completing the inspection.

Abatement

The action shall be abated by a court order if the court finds the insurer timely filed a motion to abate proceedings within 30 days after the insurer filed an original answer and the insurer either did not receive proper notice under this section or was not provided a reasonable opportunity to inspect, photograph, or evaluate the property in question after making such request.

The action is abated without a court order beginning on the 11th day after the motion to abate is filed if the insurer verifies it either did not receive proper notice under this section or was not provided a reasonable opportunity to inspect, photograph, or evaluate the property in question after making such request, and the claimant does not controvert the motion by filed affidavit within 10 days after the insurer filed the motion.

Abatement continues for 60 days after the claimant provides notice of intent to initiate litigation against the insurer in compliance with this section or 50 days after the insurer completes the requested inspection, photography, or evaluation, whichever occurs later.

During abatement, a court may not compel participation in mediation pursuant to s. 627.7015, F.S., or neutral evaluation pursuant to s. 627.7074, F.S.

Attorney Fee Calculation

Attorney fees are awarded in actions arising under property insurance contracts according to the demand-judgment quotient. If the quotient of the judgment obtained by the claimant divided by the demand made by the claimant is:

- Greater than or equal to 0.8, the claimant is entitled to an award of attorney fees in the full amount.

- Equal to or greater than 0.2 but less than 0.8, the claimant is entitled to an award of attorney fees equal to the product of the incurred reasonable attorney fees multiplied by the demand-judgment quotient. For example, if the claimant obtains a judgment of \$20,000 and the claimant's demand was \$40,000, the demand-judgment quotient would be 0.5. If the claimant's reasonable attorney fees were \$10,000, the attorney fees paid by the insurer would be \$5,000, which is the product of multiplying \$10,000 in attorney fees by the demand judgment quotient of 0.5.
- Less than 0.2, the claimant is not entitled to an award of attorney fees.

Attorney fees may also be awarded under s. 57.105, F.S., pertaining to unsupported claims, defenses, or delays.

A court may deny an award of attorney fees to a claimant that did not comply with the section's presuit notice of intent to initiate litigation requirements, where the insurer pleads insufficient notice by the claimant within 30 days after the insurer files its original answer in court.

The court may order the claimant to pay the insurer's attorney fees resulting from an action previously voluntarily dismissed, if the claimant thereafter commences an action based on or including the same claim against the same insurer that was previously voluntarily dismissed.

Consolidation of Residential Property Insurance Actions (Section 9)

Section 9 requires each party that is aware of ongoing multiple actions based upon coverage provided under the same residential property insurance policy for the same property and owners to provide written notice to the court of the multiple actions. Once the court receives notice, it may order that the actions be consolidated and transferred to the court having jurisdiction based on the total amount in controversy of all consolidated claims. If multiple cases are pending in circuit courts, the cases may be consolidated based on the date on which the first case was filed.

Deletion of Conflicting Provisions (Section 10)

Section 10 amends s. 627.7152, F.S., to delete conflicting provisions pertaining to the requirement that assignees provide notice of intent to initiate litigation and the award of attorney fees in property insurance litigation between assignees and insurers. Under the bill, these matters are now subject to Section 8 of the bill which creates s. 627.70152, F.S.

The bill establishes that the provisions of an assignment agreement, while currently provided to the insurer, must also be provided and delivered to the named insured. Additionally, an assignment agreement and this section do not modify or eliminate the right of an insurer to communicate directly with the named insured if the insured is not represented by counsel.

Lawyer Closing Statements for Property Claims (Section 11)

Section 11 requests the Florida Supreme Court to amend the Rules of Professional conduct of the Rules Regulating The Florida Bar. The new rule would require that, when a recovery is awarded in a residential or commercial residential property claim, each lawyer or law firm involved in the

case provide closing statements to the Department of Financial Services that itemize the amount of the fee received by each participating lawyer or firm, as well as costs and expenses.

Effective Date (Section 12)

Section 12 provides an effective date of 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:

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: 626.112, 626.5813, 626.9373, 627.428, 627.7011, 627.70132, 627.7015, and 627.7152.

This bill creates section 627.70152; 627.70153 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 9, 2021:

The committee substitute differs from the underlying bill by: providing a criminal penalty for aiding or abetting unlicensed insurance activity; prohibiting an unauthorized person from providing claims adjusting services; establishing, for purposes of awarding attorney fees in surplus lines cases, that the lodestar attorney fee computation is reasonable and a rebuttable presumption and that the demand-judgment quotient will be used to award attorney fees for a claimant; clarifying that an insurer may offer a roof reimbursement on the basis of replacement costs and may provide coverage to the roof on a stated value basis; establishing that the reduced 2-year claim filing notice provision applies to surplus lines; authorizing a policy to require a policyholder or assignee to participate in DFS mediation; authorizing a court to consolidate and transfer multiple claims that involve the same policy, property, and owners to one court; requesting the Florida Supreme Court to amend rules to require that lawyers and law firms, in property claim litigation, provide closing statements that itemize fees, costs, and expenses to the Department of Financial Services.

CS by Banking and Insurance on February 2, 2021:

The committee substitute clarifies that, notwithstanding s. 627.7011(1)(a), F.S., an insurer may offer a roof surface reimbursement schedule that applies once a roof is at least 10-years old, without also being required to offer replacement cost coverage on a roof of such age.

The committee substitute makes additional technical and clarifying changes to the underlying bill.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/19/2021	.	
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	.	

The Committee on Rules (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) is added to section 626.9373,
Florida Statutes, to read:

626.9373 Attorney's fees.—

(3) (a) As used in this subsection, the term:

1. "Assignee" has the same meaning as in s. 627.7152.

2. "Claimant" means an insured or assignee who is filing
suit under a property insurance policy.



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12 3. "Demand" means the specific amount alleged to be owed by
13 the insurer to the claimant under the property insurance policy.

14 4. "Demand-judgment quotient" means the quotient obtained
15 by dividing the judgment by the demand.

16 5. "Incurred attorney fees" means the total amount of
17 attorney fees supported by sufficient evidence and determined by
18 the court to have been incurred by the claimant in bringing the
19 action.

20 6. "Judgment" means damages recovered, if any, but does not
21 include any amount awarded for attorney fees, costs, or
22 interest.

23 (b) Notwithstanding any other provision of law, in a suit
24 arising under a residential or commercial property insurance
25 policy, attorney fees and costs may be recovered only pursuant
26 to s. 57.105 and this subsection. Attorney fees may be awarded
27 under this section as follows:

28 1. If the demand-judgment quotient is greater than or equal
29 to 0.8, the full amount of incurred attorney fees may be awarded
30 to the claimant.

31 2. If the demand-judgment quotient is equal to or greater
32 than 0.2 but less than 0.8, the attorney fees awarded to the
33 claimant must equal the product of multiplying the incurred
34 attorney fees by the demand-judgment quotient.

35 3. If the demand-judgment quotient is less than 0.2, a
36 claimant may not be awarded attorney fees; however, the full
37 amount of attorney fees incurred may be awarded to the insurer
38 if the claimant is an assignee.

39 (c) In an award of attorney fees under this subsection, a
40 strong presumption is created that a lodestar fee is sufficient



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41 and reasonable. Such presumption may be rebutted only in a rare
42 and exceptional circumstance with evidence that competent
43 counsel could not be retained in a reasonable manner.

44 Section 2. Subsection (4) is added to section 627.428,
45 Florida Statutes, to read:

46 627.428 Attorney fees.—

47 (4) This section does not apply to a judgment or decree
48 entered by any of court of this state against a commercial or
49 residential property insurer.

50 Section 3. Paragraphs (f), (g), and (h) are added to
51 subsection (5) of section 627.7011, Florida Statutes, to read:

52 627.7011 Homeowners' policies; offer of replacement cost
53 coverage and law and ordinance coverage.—

54 (5) This section does not:

55 (f) Prohibit an insurer, notwithstanding paragraph (1)(a),
56 from providing limited coverage on a personal lines residential
57 property insurance policy by including a roof covering
58 reimbursement schedule. If included in the policy, a roof
59 covering reimbursement schedule must do all of the following:

60 1. Provide reimbursement for repair, replacement, and
61 installation based on the annual age of a roof covering type.

62 2. Provide full replacement coverage for any roof covering
63 type less than 10 years old.

64 3. Unless otherwise demonstrated to the office to be
65 actuarially justified, provide for reimbursement amounts of no
66 less than:

67 a. Seventy percent for a metal roof type.

68 b. Forty percent for a concrete tile and clay tile roof
69 type.



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c. Forty percent for a wood shake and wood shingle roof type.

d. Twenty-five percent for all other roof types.

4. Include at the top of the schedule, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF COVERING REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

5. Allow for all actuarially sound methods of s. 627.062 to apply.

6. Be approved by the office.

7. Be provided to the insured with the policy documents at issuance and renewal.

A roof covering reimbursement schedule may not be applied to a roof if there is a total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril.

(g) Prohibit an insurer that provides roof reimbursement on the basis of a roof covering reimbursement schedule from also offering roof reimbursement on the basis of replacement costs.

(h) Prohibit an insurer, notwithstanding paragraph (1)(a), from providing coverage on a personal lines residential property



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insurance policy by limiting coverage for a roof to a stated value sublimit of coverage. A stated value sublimit of coverage may not be applied to a roof if there is a total loss to the primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril.

Section 4. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance ~~windstorm or hurricane~~ claim.—A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, including a property insurance policy issued by an eligible surplus lines insurer, for loss or damage ~~caused by the peril of windstorm or hurricane~~ is barred unless notice of the claim, supplemental claim, or reopened claim is ~~was~~ given to the insurer in accordance with the terms of the policy within 2 ~~3~~ years after the date of loss ~~hurricane first made landfall or the windstorm caused the covered damage~~. For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses ~~from the same hurricane or windstorm~~ ~~which~~ the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 5. Subsection (9) of section 627.7015, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

627.7015 Alternative procedure for resolution of disputed



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property insurance claims.—

(9) For purposes of this section, the term “claim” refers to any dispute between an insurer and a policyholder relating to a material issue of fact other than a dispute:

(a) With respect to which the insurer has a reasonable basis to suspect fraud;

(b) When, based on agreed-upon facts as to the cause of loss, there is no coverage under the policy;

(c) With respect to which the insurer has a reasonable basis to believe that the policyholder has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation;

(d) With respect to which the amount in controversy is less than \$500, unless the parties agree to mediate a dispute involving a lesser amount; or

(e) With respect to a ~~windstorm or hurricane~~ loss that does not comply with s. 627.70132.

(10) A property insurance policy may require the policyholder as a first-party claimant and a third party as an assignee of the policy benefits to participate in mediation pursuant to this section if requested by the insurer.

Section 6. Section 627.70152, Florida Statutes, is created to read:

627.70152 Suits arising under a property insurance policy.—

(1) APPLICATION.—This section applies to all suits under a property insurance policy, including actions brought by an assignee.

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



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(a) "Assignee" has the same meaning as in s. 627.7152.

(b) "Claimant" means an insured or assignee who is filing
suit under a property insurance policy.

(c) "Demand" means the specific amount alleged to be owed
by the insurer to the claimant under the property insurance
policy.

(d) "Demand-judgment quotient" means the quotient obtained
by dividing the judgment by the demand.

(e) "Incurred attorney fees" means the total amount of
attorney fees supported by sufficient evidence and determined by
the court to have been incurred by the claimant in bringing the
action.

(f) "Judgment" means damages recovered, if any, but does
not include any amount awarded for attorney fees, costs, or
interest.

(3) NOTICE.—

(a) As a condition precedent to filing a suit under a
property insurance policy, a claimant must provide the insurer a
written notice of intent to initiate litigation in accordance
with this section. A claimant who is an assignee must also
provide such notice to the named insured or the assignor, if not
the named insured. Such notice must be served by certified mail,
return receipt requested, or electronic delivery at least 60
days before filing suit. However, such notice may not be served
before the insurer has made a determination of coverage under s.
627.70131. An attorney or other representative of the claimant
who provides such notice must provide a copy of the notice to
the claimant. The notice and any copy must specify:

1. That the notice is being provided pursuant to this



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section;

2. The alleged acts or omissions of the insurer giving rise to the action;

3. The demand;

4. The amount of reasonable and necessary attorney fees incurred by the claimant, to be calculated by multiplying the number of hours actually worked on the claim as of the date of the notice by the claimant's attorney by a reasonable hourly rate; and

5. If provided by an attorney or other representative, that a copy of the notice was provided to the claimant.

The notice and any copy must be accompanied by 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.

(b) As a precondition to filing suit, an assignee also must comply with s. 627.7152.

(c) A notice of intent to initiate litigation must be served within the time limits provided in s. 95.11 and is not required if the action is a counterclaim. Service of a notice tolls the time limits provided in s. 95.11 for 60 days if such time limits will expire before the end of the 60-day notice period.

(d) A court must dismiss without prejudice any action relating to a claim for which a notice of intent to initiate litigation is given as required by this subsection if such



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215 action is commenced before the expiration of the 60-day notice
216 period, is brought by an insurer to whom notice was given, and
217 is against the claimant giving notice.

218 (4) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice
219 provided pursuant to subsection (3) and the submissions provided
220 pursuant to subparagraph (3)(b)2.:

221 (a) Are admissible as evidence in a civil action or an
222 alternative dispute resolution proceeding relating to the claim
223 for which the notice is given;

224 (b) Do not limit the evidence of attorney fees, damages, or
225 loss which may be offered at trial; and

226 (c) Do not relieve any obligation that an insured or
227 assignee has to give notice under any other provision of law.

228 (5) INSPECTION.—Within 30 days after an insurer receives
229 notice pursuant to subsection (3), the insurer may send a
230 written request to the insured or assignee to inspect,
231 photograph, or evaluate, in a reasonable manner and at a
232 reasonable time, the property that is the subject of the claim.
233 If reasonably possible, the insurer must complete the
234 inspection, photography, and evaluation not later than 60 days
235 after the insurer receives the presuit notice. After completing
236 the inspection, the insurer must conduct an internal review by a
237 duly-qualified claims adjuster to fairly and promptly evaluate
238 the claim. This section does not limit any right provided in a
239 property insurance policy or contract to inspect property.

240 (6) ABATEMENT.—

241 (a) In addition to taking any other action allowed by an
242 insurance policy or a contract or by any other provision of law,
243 an insurer may file a motion to abate a suit under a property



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insurance policy if the insurer:

1. Files the motion no later than the 30th day after the insurer filed an original answer in the court in which the action is pending; and

2. Did not receive notice required pursuant to subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(b) The court shall abate the action if the court finds that the insurer did not receive the notice required by subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(c) The action is abated without a court order beginning on the 11th day after the motion to abate is filed if the motion to abate:

1. Is verified and states that the insurer did not receive the notice required by subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim; and

2. Is not controverted by an affidavit filed by the insured or assignee within 10 days after the date the plea in abatement is filed.

(d) An affidavit filed pursuant to subparagraph (c)2. must include as an attachment a copy of the written notice sent pursuant to subsection (3) and state the date on which such



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notice was given.

(e) Abatement under this subsection continues until the later of:

1. Sixty days after the claimant provides notice to the insurer in compliance with subsection (3); or

2. Fifty days after the insurer completes the requested inspection, photographing, or evaluating of the property pursuant to subsection (5).

(f) If an action is abated pursuant to this subsection, a court may not compel during the abatement period participation in mediation pursuant to s. 627.7015 or neutral evaluation pursuant to s. 627.7074.

(7) ATTORNEY FEES.—

(a) Notwithstanding any other provision of law, in a suit arising under a residential or commercial property insurance policy, attorney fees and costs may be recovered only pursuant to s. 57.105 and this subsection. An award of attorney fees and costs may include only attorney fees and costs incurred after the suit is filed and may not include attorney fees and costs incurred while a suit is in abatement pursuant to this section. Attorney fees may be awarded under this section as follows:

1. If the demand-judgment quotient is greater than or equal to 0.8, the full amount of incurred attorney fees may be awarded to the claimant.

2. If the demand-judgment quotient is equal to or greater than 0.2 but less than 0.8, the attorney fees awarded to the claimant must equal the product of multiplying the incurred attorney fees by the demand-judgment quotient.

3. If the demand-judgment quotient is less than 0.2, a



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claimant may not be awarded attorney fees; however, the full amount of attorney fees incurred may be awarded to the insurer if the claimant is an assignee.

(b) In an award of attorney fees under this subsection, a strong presumption is created that a lodestar fee is sufficient and reasonable. Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

(c) If an insurer pleads and proves that it did not receive notice that complies with subsection (3) and files such pleading no later than the 30th day after the insurer files an original answer in the court in which the action is pending, the court may not award to the claimant any incurred attorney fees for services rendered after the date on which the insurer files such pleading with the court.

(d) If a claimant commences an action in any court of this state based upon or including the same claim against the same adverse party that such insured or assignee has previously voluntarily dismissed in a court of this state, the court may order the insured or assignee to pay the attorney fees and costs of the adverse party resulting from the action previously voluntarily dismissed. The court shall stay the proceedings in the subsequent action until the insured or assignee has complied with the order.

Section 7. Section 627.70153, Florida Statutes, is created to read:

627.70153 Consolidation of residential property insurance actions.—Each party that is aware of ongoing multiple actions involving coverage provided under the same residential property



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insurance policy for the same property with the same owners must
provide written notice to the court of the multiple actions.
Upon notification of any party, the court may order that the
actions be consolidated and transferred to the court having
jurisdiction based on the total amount in controversy of all
consolidated claims. If multiple cases are pending in circuit
courts, the cases may be consolidated based on the date on which
the first case was filed.

Section 8. Paragraphs (d) through (g) of subsection (1),
paragraph (a) of subsection (2), and subsections (5), (9), and
(10) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

~~(d) "Disputed amount" means the difference between the~~
~~assignee's presuit settlement demand and the insurer's presuit~~
~~settlement offer.~~

~~(e) "Judgment obtained" means damages recovered, if any,~~
~~but does not include any amount awarded for attorney fees,~~
~~costs, or interest.~~

~~(f) "Presuit settlement demand" means the demand made by~~
~~the assignee in the written notice of intent to initiate~~
~~litigation as required by paragraph (9)(a).~~

~~(g) "Presuit settlement offer" means the offer made by the~~
~~insurer in its written response to the notice of intent to~~
~~initiate litigation as required by paragraph (9)(b).~~

(2) (a) An assignment agreement must:

1. Be in writing and executed by and between the assignor
and the assignee.

2. Contain a provision that allows the assignor to rescind



670126

the assignment agreement without a penalty or fee by submitting a written notice of rescission signed by the assignor to the assignee within 14 days after the execution of the agreement, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.

3. Contain a provision requiring the assignee to provide a copy of the executed assignment agreement to the insurer and the named insured within 3 business days after the date on which the assignment agreement is executed or the date on which work begins, whichever is earlier. Delivery of the copy of the assignment agreement to the insurer and the named insured may be made:

a. By personal service, overnight delivery, or electronic transmission, with evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the insurer or named insured, as applicable; or

b. To the location designated for the insurer's receipt of such agreements as specified in the policy.

4. Contain a written, itemized, per-unit cost estimate of the services to be performed by the assignee.

5. Relate only to work to be performed by the assignee for services to protect, repair, restore, or replace a dwelling or structure or to mitigate against further damage to such property.

6. Contain the following notice in 18-point uppercase and boldfaced type:



670126

YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

7. Contain a provision requiring the assignee to indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits.

(5) An assignment agreement and this section do not modify or eliminate:

(a) Any term, condition, or defense relating to any managed repair arrangement provided in the policy.

(b) The right of an insurer to communicate directly with



670126

the named insured.

~~(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, or electronic delivery 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.~~

~~(b) An insurer must respond in writing to the notice within 10 business days after receiving the notice specified in paragraph (a) by making a presuit settlement offer or requiring the assignee to participate in appraisal or other method of alternative dispute resolution under the policy. An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code.~~

~~(10) Notwithstanding any other provision of law, in a suit related to an assignment agreement for post-loss claims arising under a residential or commercial property insurance policy,~~



670126

~~attorney fees and costs may be recovered by an assignee only
under s. 57.105 and this subsection.~~

~~(a) If the difference between the judgment obtained by the
assignee and the presuit settlement offer is:~~

~~1. Less than 25 percent of the disputed amount, the insurer
is entitled to an award of reasonable attorney fees.~~

~~2. At least 25 percent but less than 50 percent of the
disputed amount, no party is entitled to an award of attorney
fees.~~

~~3. At least 50 percent of the disputed amount, the assignee
is entitled to an award of reasonable attorney fees.~~

~~(b) If the insurer fails to inspect the property or provide
written or oral authorization for repairs within 7 calendar days
after the first notice of loss, the insurer waives its right to
an award of attorney fees under this subsection. If the failure
to inspect the property or provide written or oral authorization
for repairs is the result of an event for which the Governor had
declared a state of emergency under s. 252.36, factors beyond
the control of the insurer which reasonably prevented an
inspection or written or oral authorization for repairs, or the
named insured's failure or inability to allow an inspection of
the property after a request by the insurer, the insurer does
not waive its right to an award of attorney fees under this
subsection.~~

~~(c) If an assignee commences an action in any court of this
state based upon or including the same claim against the same
adverse party that such assignee has previously voluntarily
dismissed in a court of this state, the court may order the
assignee to pay the attorney fees and costs of the adverse party~~



670126

~~resulting from the action previously voluntarily dismissed. The court shall stay the proceedings in the subsequent action until the assignee has complied with the order.~~

Section 9. The Supreme Court of Florida is requested to amend the Rules of Professional Conduct of the Rules Regulating The Florida Bar to require that, when a recovery judgment has been awarded in a residential or commercial residential property claim, each defense and plaintiff lawyer or law firm must provide closing statements itemizing the amount of the fee received by each defense and plaintiff lawyer or law firm, costs, and expenses to the Department of Financial Services.

Section 10. 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 property insurance; amending s. 626.9373, F.S.; defining terms; providing for an award of attorney fees for certain claims under specified circumstances; providing that, for certain attorney fees awarded for claims arising under surplus lines property insurance policies, a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that such presumption may be rebutted only under certain circumstances; amending s. 627.428, F.S.; providing applicability; amending s. 627.7011, F.S.; providing that certain provisions



670126

relating to homeowners' policies, offers of replacement cost coverage, and offers of law and ordinance coverage do not prohibit insurers from providing specified property insurance policies by including roof covering reimbursement schedules; providing requirements for roof covering reimbursement schedules; prohibiting application of a roof covering reimbursement schedule under certain circumstances; providing that certain provisions relating to homeowners' policies, offers of replacement cost coverage, and offers of law and ordinance coverage do not prohibit insurers from providing specified property insurance policies by offering roof reimbursement on the basis of replacement costs; providing that certain provisions relating to homeowners' policies, offers of replacement cost coverage, and offers of law and ordinance coverage do not prohibit insurers from providing coverage on specified property insurance policies for a roof that is limited to a certain value; providing that a stated value sublimit of coverage may not be applied to a roof in certain circumstances; amending s. 627.70132, F.S.; revising property insurance coverages for which a notice of claim must be given to the insurer within a specified timeframe; revising the timeframe for providing notices of property insurance claims; revising the definitions of the terms "supplemental claim" and "reopened claim"; amending s. 627.7015, F.S.; conforming a provision to changes made by the



670126

act; authorizing property insurance policies to require policyholders and assignees to participate in mediation; creating s. 627.70152, F.S.; providing applicability; defining terms; requiring notice of intent to initiate litigation; specifying requirements for such notice; specifying an assignee's presuit obligations; specifying the timeframe within which a notice of intent to initiate litigation must be served; requiring dismissal of certain actions under specified circumstances; specifying the admissibility of certain evidence; providing construction; authorizing an insurer to request to inspect, photograph, or evaluate certain property; specifying requirements for such inspections, photographs, and evaluations; authorizing motions to abate suits under property insurance policies; specifying conditions for abatement; providing for an award of attorney fees for certain claims under specified circumstances; providing that, for certain attorney fees awarded for claims arising under property insurance policies, a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that such presumption may be rebutted only under certain circumstances; providing for an award of attorney fees following a voluntary dismissal under certain circumstances; requiring the court to stay proceedings under certain circumstances; creating s. 627.70153, F.S.; requiring parties that are aware of certain residential property insurance claims to notify the



670126

court of multiple proceedings; authorizing the court to consolidate certain residential property insurance claims upon notification of any party; amending s. 627.7152, F.S.; deleting definitions; requiring assignment agreements to be provided to named insureds; providing that assignment agreements do not modify the right of insurers to communicate directly with named insureds; deleting a requirement for a notice of intent to initiate litigation; deleting requirements for such notice; deleting a requirement for a written response to the notice of intent to initiate litigation; deleting requirements for such response; deleting a provision related to an award of reasonable attorney fees and costs for certain claims arising under an assignment agreement; deleting a provision related to an award of reasonable attorney fees and costs following a voluntary dismissal under certain circumstances; deleting a requirement for the court to stay proceedings under certain circumstances; requesting the Florida Supreme Court to amend rules to require defense and plaintiff lawyers or firms to provide closing statements to the department under certain circumstances; providing an effective date.



518486

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/19/2021	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (670126) (with title amendment)

Between lines 4 and 5
insert:

Section 1. Section 626.5813, Florida Statutes, is created
to read:

626.5813 Claims adjusting.—

(1) (a) As used in this section, the term "claims adjusting"
means directly or indirectly:

1. Attempting or undertaking to ascertain and determine the



518486

amount of any claim, loss, or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract, if such action results in payment to or receipt of money, commission, or any other thing of value by the party or parties rendering such service or persons affiliated with such party or parties; or

2. Soliciting services as described in subparagraph 1. or soliciting an insured or policyholder to file an insurance claim.

(b) The term does not include:

1. Paid services as a spokesperson used as part of a written or an electronic advertisement.

2. Paid services as a photographer or videographer used to capture images of damage.

3. Paid services to inventory personal property or business personal property.

4. Discussion or explanation of a bid for construction or repair services by a licensed contractor under part I of chapter 489, or a subcontractor for a licensed contractor, with a property owner or the insurer of the property.

(2) Except for a duly licensed attorney at law as exempted under s. 626.860 or an agent as exempted under s. 626.862, a person may not provide claims adjusting services unless licensed and appointed as an adjuster under this part.

(3) The department may take administrative action and impose fines against any persons performing claims adjusting, soliciting, marketing, or any other services under this section or s. 626.854 without the licensure required under s. 626.112 or s. 626.854.



518486

(4) This section applies only to property lines of insurance.

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

And the title is amended as follows:

Delete line 494

and insert:

An act relating to property insurance; creating s.
626.5813, F.S.; defining the term "claims adjusting";
prohibiting a person from providing claims adjusting
services unless the person meets specified
requirements; authorizing the department to take
administrative actions and impose fines against
persons performing specified activities without
licensure; providing applicability; amending s.



861760

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/19/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment to Amendment (670126) (with title amendment)

Delete lines 5 - 43.

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

And the title is amended as follows:

Delete lines 495 - 502.



727572

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/19/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (670126) (with title amendment)

Delete lines 44 - 49.

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

And the title is amended as follows:

Delete line 503.



798322

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/19/2021	.	
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The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (670126) (with title amendment)

Delete lines 50 - 103.

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

And the title is amended as follows:

Delete lines 503 - 526

and insert:

627.428, F.S.; providing applicability; amending s.

627.70132,



651414

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/19/2021	.	
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The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (670126)

Delete lines 73 - 88
and insert:

4. Include an acknowledgment form to be signed by the insured as acknowledgment that the roof covering reimbursement schedule is a limitation of payment owed by the insurer. This signed form must be returned to the insurer and agent, if applicable, before an insurer may issue a policy with a roof covering reimbursement schedule. The acknowledgment form must be in bold type no smaller than 18 point and include the following



651414

statements, which must also be included as a disclosure notice
on the cover or first page of the insurance policy declarations
page:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO
PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF COVERING
REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED
PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING
TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU
HAVING TO PAY, USING YOUR OWN SEPARATE FUNDS, SIGNIFICANT COSTS
TO REPAIR OR REPLACE YOUR ROOF WHICH YOUR INSURANCE CARRIER IS
NOT LIABLE FOR. THESE AMOUNTS ARE IN ADDITION TO YOUR
DEDUCTIBLE."

"WARNING! IF YOUR ROOF IS CURRENTLY 10 YEARS OLD OR OLDER, OR
UPON YOUR ROOF BECOMING 10 YEARS OLD OR OLDER, AND BECAUSE YOUR
ROOF IS OF A CERTAIN TYPE OF MATERIAL, IN THE EVENT OF A COVERED
LOSS, THIS POLICY WILL ONLY COVER 30 PERCENT TO 75 PERCENT OF
THE REPLACEMENT FOR YOUR ROOF COVERING MATERIALS."

5. Allow for actuarially sound methods to apply in
accordance with s. 627.062.

6. Be approved by the office.

7. Be provided to the insured with the policy documents at
issuance and at least 60 days before each renewal.



547800

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/19/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (670126) (with title amendment)

Delete lines 104 - 123.

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

And the title is amended as follows:

Delete lines 526 - 532

and insert:

roof in certain circumstances; amending s. 627.7015,



706816

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/19/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment to Amendment (670126) (with title amendment)

Delete lines 150 - 325.

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

And the title is amended as follows:

Delete lines 536 - 560

and insert:

mediation; creating s. 627.70153,



128746

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/19/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (670126)

Delete line 483
and insert:
claim, each defense and plaintiff lawyer or law firm, including
in-house counsel, must



546412

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/19/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (670126) (with title amendment)

Delete line 486
and insert:
costs, and expenses to the Department of Financial Services. The same information described in this section must also be provided to the department by the insurance company's in-house counsel, its outside defense law firm, and each participating lawyer for each of the claims described in this section.



546412

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

And the title is amended as follows:

Delete line 585

and insert:

certain circumstances; requiring such statements to be
provided to the department by specified entities and
persons; providing an effective date.



963428

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/19/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 153 - 189.

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

And the title is amended as follows:

Delete lines 11 - 19

and insert:

licensure; amending s. 627.428, F.S.; providing



934564

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/19/2021	.	
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The Committee on Rules (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 199 - 252.

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

And the title is amended as follows:

Delete lines 25 - 47.



503350

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/19/2021	.	
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The Committee on Rules (Gibson) recommended the following:

Senate Amendment

Delete lines 222 - 237
and insert:

4. Include an acknowledgment form to be signed by the insured as acknowledgment that the roof covering reimbursement schedule is a limitation of payment owed by the insurer. This signed form must be returned to the insurer and agent, if applicable, before an insurer may issue a policy with a roof covering reimbursement schedule. The acknowledgment form must be in bold type no smaller than 18 point and include the following



503350

statements, which must also be included as a disclosure notice
on the cover or first page of the insurance policy declarations
page:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO
PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF COVERING
REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED
PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING
TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU
HAVING TO PAY, USING YOUR OWN SEPARATE FUNDS, SIGNIFICANT COSTS
TO REPAIR OR REPLACE YOUR ROOF WHICH YOUR INSURANCE CARRIER IS
NOT LIABLE FOR. THESE AMOUNTS ARE IN ADDITION TO YOUR
DEDUCTIBLE."

"WARNING! IF YOUR ROOF IS CURRENTLY 10 YEARS OLD OR OLDER, OR
UPON YOUR ROOF BECOMING 10 YEARS OLD OR OLDER, AND BECAUSE YOUR
ROOF IS OF A CERTAIN TYPE OF MATERIAL, IN THE EVENT OF A COVERED
LOSS, THIS POLICY WILL ONLY COVER 30 PERCENT TO 75 PERCENT OF
THE REPLACEMENT FOR YOUR ROOF COVERING MATERIALS."

5. Allow for actuarially sound methods to apply in
accordance with s. 627.062.

6. Be approved by the office.

7. Be provided to the insured with the policy documents at
issuance and at least 60 days before each renewal.



650462

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/19/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 253 - 272.

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

And the title is amended as follows:

Delete lines 48 - 54

and insert:

circumstances; amending s. 627.7015, F.S.;



393102

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/19/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 299 - 463.

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

And the title is amended as follows:

Delete lines 58 - 77

and insert:

mediation; creating s. 627.70153, F.S.; requiring



971154

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/19/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 621 - 623
and insert:
claim, each defense and plaintiff lawyer or law firm must
provide closing statements itemizing the amount of the fee
received by each defense and plaintiff lawyer or law firm,
costs, and expenses to

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

And the title is amended as follows:



971154

12 Delete line 100
13 and insert:
14 require defense and plaintiff lawyers or law firms to
15 provide



397328

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/19/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete line 624
and insert:
the Department of Financial Services. The same information
described in this section must also be provided to the
department by the insurance company's in-house counsel, its
outside defense law firm, and each participating lawyer for each
of the claims described in this section.

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



397328

12 And the title is amended as follows:
13 Delete line 102
14 and insert:
15 circumstances; requiring such statements to be
16 provided to the department by specified entities;
17 providing an effective date.

By the Committees on Judiciary; and Banking and Insurance; and
Senators Boyd and Brandes

590-02598-21

202176c2

1 A bill to be entitled
2 An act relating to property insurance; amending s.
3 626.112, F.S.; providing a criminal penalty for aiding
4 or abetting unlicensed activity; creating s. 626.5813,
5 F.S.; defining the term "claims adjusting";
6 prohibiting a person from providing claims adjusting
7 services unless the person meets specified
8 requirements; authorizing the department to take
9 administrative actions and impose fines against
10 persons performing specified activities without
11 licensure; amending s. 626.9373, F.S.; providing that,
12 for certain attorney fees awarded for claims arising
13 under surplus lines property insurance policies, a
14 strong presumption is created that a lodestar fee is
15 sufficient and reasonable; providing that such
16 presumption may be rebutted only under certain
17 circumstances; defining terms; providing for an award
18 of attorney fees for certain claims under specified
19 circumstances; amending s. 627.428, F.S.; providing
20 that, for certain attorney fees awarded for claims
21 arising under property insurance policies, a strong
22 presumption is created that a lodestar fee is
23 sufficient and reasonable; providing that such
24 presumption may be rebutted only under certain
25 circumstances; amending s. 627.7011, F.S.; providing
26 that certain provisions relating to homeowners'
27 policies, offers of replacement cost coverage, and
28 offers of law and ordinance coverage do not prohibit
29 insurers from providing specified property insurance

Page 1 of 22

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

590-02598-21

202176c2

30 policies by including roof surface reimbursement
31 schedules; providing requirements for roof surface
32 reimbursement schedules; prohibiting application of a
33 roof surface reimbursement schedule under certain
34 circumstances; providing that certain provisions
35 relating to homeowners' policies, offers of
36 replacement cost coverage, and offers of law and
37 ordinance coverage do not prohibit insurers from
38 providing specified property insurance policies by
39 offering roof reimbursement on the basis of
40 replacement costs; providing that certain provisions
41 relating to homeowners' policies, offers of
42 replacement cost coverage, and offers of law and
43 ordinance coverage do not prohibit insurers from
44 providing coverage on specified property insurance
45 policies for a roof that is limited to a certain
46 value; providing that a stated value sublimit of
47 coverage may not be applied to a roof in certain
48 circumstances; amending s. 627.70132, F.S.; revising
49 property insurance coverages for which a notice of
50 claim must be given to the insurer within a specified
51 timeframe; revising the timeframe for providing
52 notices of property insurance claims; revising the
53 definitions of the terms "supplemental claim" and
54 "reopened claim"; amending s. 627.7015, F.S.;
55 conforming a provision to changes made by the act;
56 authorizing property insurance policies to require
57 policyholders and assignees to participate in
58 mediation; creating s. 627.70152, F.S.; providing

Page 2 of 22

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

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202176c2

59 applicability; defining terms; requiring notice of
 60 intent to initiate litigation; specifying requirements
 61 for such notice; specifying an assignee's presuit
 62 obligations; specifying the timeframe within which a
 63 notice of intent to initiate litigation must be
 64 served; requiring dismissal of certain actions under
 65 specified circumstances; specifying the admissibility
 66 of certain evidence; providing construction;
 67 authorizing an insurer to request to inspect,
 68 photograph, or evaluate certain property; specifying
 69 requirements for such inspections, photographs, and
 70 evaluations; authorizing motions to abate suits under
 71 property insurance policies; specifying conditions for
 72 abatement; providing for an award of attorney fees for
 73 certain claims under specified circumstances;
 74 providing for an award of attorney fees following a
 75 voluntary dismissal under certain circumstances;
 76 requiring the court to stay proceedings under certain
 77 circumstances; creating s. 627.70153, F.S.; requiring
 78 parties that are aware of certain residential property
 79 insurance claims to notify the court of multiple
 80 proceedings; authorizing the court to consolidate
 81 certain residential property insurance claims upon
 82 notification of any party; amending s. 627.7152, F.S.;
 83 deleting definitions; requiring assignment agreements
 84 to be provided to named insureds; providing that
 85 assignment agreements do not modify the right of
 86 insurers to communicate directly with unrepresented
 87 named insureds; deleting a requirement for a notice of

Page 3 of 22

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

590-02598-21

202176c2

88 intent to initiate litigation; deleting requirements
 89 for such notice; deleting a requirement for a written
 90 response to the notice of intent to initiate
 91 litigation; deleting requirements for such response;
 92 deleting a provision related to an award of reasonable
 93 attorney fees and costs for certain claims arising
 94 under an assignment agreement; deleting a provision
 95 related to an award of reasonable attorney fees and
 96 costs following a voluntary dismissal under certain
 97 circumstances; deleting a requirement for the court to
 98 stay proceedings under certain circumstances;
 99 requesting the Florida Supreme Court to amend rules to
 100 require participating lawyers or firms to provide
 101 closing statements to the department under certain
 102 circumstances; providing an effective date.

103
 104 Be It Enacted by the Legislature of the State of Florida:

105
 106 Section 1. Subsection (9) of section 626.112, Florida
 107 Statutes, is amended to read:

108 626.112 License and appointment required; agents, customer
 109 representatives, adjusters, insurance agencies, service
 110 representatives, managing general agents.—

111 (9) Any person who knowingly transacts insurance or
 112 otherwise engages in insurance activities in this state without
 113 a license in violation of this section or who knowingly aids or
 114 abets an unlicensed person in transacting insurance or otherwise
 115 engaging in insurance activities in this state without a license
 116 commits a felony of the third degree, punishable as provided in

Page 4 of 22

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

590-02598-21

202176c2

s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 626.5813, Florida Statutes, is created to read:

626.5813 Claims adjusting.—

(1) (a) As used in this section, the term "claims adjusting" means directly or indirectly:

1. Attempting or undertaking to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract, if such action results in payment to or receipt of money, commission, or any other thing of value by the party or parties rendering such service or persons affiliated with such party or parties; or
2. Soliciting services as described in subparagraph 1. or soliciting an insured or policyholder to file an insurance claim.

(b) The term does not include:

1. Paid services as a spokesperson used as part of a written or an electronic advertisement.

2. Paid services as a photographer or videographer used to capture images of damage.

3. Paid services to inventory personal property or business personal property.

4. Discussion or explanation of a bid for construction or repair services by a licensed contractor under part I of chapter 489, or a subcontractor for a licensed contractor, with a property owner or the insurer of the property.

(2) Except for a duly licensed attorney at law as exempted under s. 626.860 or an agent as exempted under s. 626.862, a

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person may not provide claims adjusting services unless licensed and appointed as an adjuster under this part.

(3) The department may take administrative action and impose fines against any persons performing claims adjusting, soliciting, marketing, or any other services under this section or s. 626.854 without the licensure required under s. 626.112 or s. 626.854.

Section 3. Subsections (3) and (4) are added to section 626.9373, Florida Statutes, to read:

626.9373 Attorney's fees.—

(3) In an award of attorney fees under this section for a claim arising under a property insurance policy, a strong presumption is created that a lodestar fee is sufficient and reasonable. Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

(4) (a) As used in this subsection, the term:

1. "Claimant" means an insured or assignee who is filing suit under a property insurance policy.

2. "Demand" means the specific amount alleged to be owed by the insurer to the claimant under the property insurance policy.

3. "Demand-judgment quotient" means the quotient obtained by dividing the judgment by the demand.

4. "Incurred attorney fees" means the total amount of attorney fees supported by sufficient evidence and determined by the court to have been incurred by the claimant in bringing the action.

5. "Judgment" means damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or

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175 interest.

176 (b) Notwithstanding any other provision of law, in a suit
 177 arising under a residential or commercial property insurance
 178 policy, attorney fees and costs may be recovered by a claimant
 179 only pursuant to s. 57.105 and this subsection. Attorney fees
 180 may be awarded to a claimant under this section as follows:

181 1. If the demand-judgment quotient is greater than or equal
 182 to 0.8, the full amount of incurred attorney fees may be
 183 awarded.

184 2. If the demand-judgment quotient is equal to or greater
 185 than 0.2 but less than 0.8, the attorney fees must equal the
 186 product of multiplying the incurred attorney fees by the demand-
 187 judgment quotient.

188 3. If the demand-judgment quotient is less than 0.2,
 189 attorney fees may not be awarded.

190 Section 4. Subsection (4) is added to section 627.428,
 191 Florida Statutes, to read:

192 627.428 Attorney fees.—

193 (4) In an award of attorney fees under this section for a
 194 claim arising under a property insurance policy, a strong
 195 presumption is created that a lodestar fee is sufficient and
 196 reasonable. Such presumption may be rebutted only in a rare and
 197 exceptional circumstance with evidence that competent counsel
 198 could not be retained in a reasonable manner.

199 Section 5. Paragraphs (f), (g), and (h) are added to
 200 subsection (5) of section 627.7011, Florida Statutes, to read:

201 627.7011 Homeowners' policies; offer of replacement cost
 202 coverage and law and ordinance coverage.—

203 (5) This section does not:

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204 (f) Prohibit an insurer, notwithstanding paragraph (1)(a),
 205 from providing limited coverage on a personal lines residential
 206 property insurance policy by including a roof surface
 207 reimbursement schedule. If included in the policy, a roof
 208 surface reimbursement schedule must do all of the following:

209 1. Provide reimbursement for repair, replacement, and
 210 installation based on the annual age of a roof surface type.

211 2. Provide full replacement coverage for any roof surface
 212 type less than 10 years old.

213 3. Unless otherwise demonstrated to the office to be
 214 actuarially justified, provide for reimbursement amounts of no
 215 less than:

216 a. Seventy percent for a metal roof type.

217 b. Forty percent for a concrete tile and clay tile roof
 218 type.

219 c. Forty percent for a wood shake and wood shingle roof
 220 type.

221 d. Twenty-five percent for all other roof types.

222 4. Include at the top of the schedule, in bold type no
 223 smaller than 12 points, the following statement:

224 "PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO
 225 PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE
 226 REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED
 227 PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING
 228 TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU
 229 HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF.
 230 PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

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233 5. Allow for all actuarially sound methods of s. 627.062 to
 234 apply.

235 6. Be approved by the office.

236 7. Be provided to the insured with the policy documents at
 237 issuance and renewal.

238
 239 A roof surface reimbursement schedule may not be applied to a
 240 roof if there is a total loss to a primary structure in
 241 accordance with the valued policy law under s. 627.702 which is
 242 caused by a covered peril.

243 (g) Prohibit an insurer that provides roof reimbursement on
 244 the basis of a roof surface reimbursement schedule from also
 245 offering roof reimbursement on the basis of replacement costs.

246 (h) Prohibit an insurer, notwithstanding paragraph (1)(a),
 247 from providing coverage on a personal lines residential property
 248 insurance policy by limiting coverage for a roof to a stated
 249 value sublimit of coverage. A stated value sublimit of coverage
 250 may not be applied to a roof if there is a total loss to the
 251 primary structure in accordance with the valued policy law under
 252 s. 627.702 which is caused by a covered peril.

253 Section 6. Section 627.70132, Florida Statutes, is amended
 254 to read:

255 627.70132 Notice of property insurance ~~windstorm or~~
 256 ~~hurricane~~ claim.—A claim, supplemental claim, or reopened claim
 257 under an insurance policy that provides property insurance, as
 258 defined in s. 624.604, including a property insurance policy
 259 issued by an eligible surplus lines insurer, for loss or damage
 260 ~~caused by the peril of windstorm or hurricane~~ is barred unless
 261 notice of the claim, supplemental claim, or reopened claim is

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262 ~~was~~ given to the insurer in accordance with the terms of the
 263 policy within 2 3 years after the date of loss ~~hurricane first~~
 264 ~~made landfall or the windstorm caused the covered damage.~~ For
 265 purposes of this section, the term "supplemental claim" or
 266 "reopened claim" means any additional claim for recovery from
 267 the insurer for losses ~~from the same hurricane or windstorm~~
 268 ~~which~~ the insurer has previously adjusted pursuant to the
 269 initial claim. This section does not affect any applicable
 270 limitation on civil actions provided in s. 95.11 for claims,
 271 supplemental claims, or reopened claims timely filed under this
 272 section.

273 Section 7. Subsection (9) of section 627.7015, Florida
 274 Statutes, is amended, and subsection (10) is added to that
 275 section, to read:

276 627.7015 Alternative procedure for resolution of disputed
 277 property insurance claims.—

278 (9) For purposes of this section, the term "claim" refers
 279 to any dispute between an insurer and a policyholder relating to
 280 a material issue of fact other than a dispute:

281 (a) With respect to which the insurer has a reasonable
 282 basis to suspect fraud;

283 (b) When, based on agreed-upon facts as to the cause of
 284 loss, there is no coverage under the policy;

285 (c) With respect to which the insurer has a reasonable
 286 basis to believe that the policyholder has intentionally made a
 287 material misrepresentation of fact which is relevant to the
 288 claim, and the entire request for payment of a loss has been
 289 denied on the basis of the material misrepresentation;

290 (d) With respect to which the amount in controversy is less

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291 than \$500, unless the parties agree to mediate a dispute
 292 involving a lesser amount; or
 293 (e) With respect to a ~~windstorm or hurricane~~ loss that does
 294 not comply with s. 627.70132.

295 (10) A property insurance policy may require the
 296 policyholder as a first-party claimant and a third party as an
 297 assignee of the policy benefits to participate in mediation
 298 pursuant to this section if requested by the insurer.

299 Section 8. Section 627.70152, Florida Statutes, is created
 300 to read:

301 627.70152 Suits arising under a property insurance policy.-

302 (1) APPLICATION.-This section applies to all suits under a
 303 property insurance policy, including actions brought by an
 304 assignee.

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

306 (a) "Assignee" has the same meaning as in s. 627.7152.

307 (b) "Claimant" means an insured or assignee who is filing
 308 suit under a property insurance policy.

309 (c) "Demand" means the specific amount alleged to be owed
 310 by the insurer to the claimant under the property insurance
 311 policy.

312 (d) "Demand-judgment quotient" means the quotient obtained
 313 by dividing the judgment by the demand.

314 (e) "Incurred attorney fees" means the total amount of
 315 attorney fees supported by sufficient evidence and determined by
 316 the court to have been incurred by the claimant in bringing the
 317 action.

318 (f) "Judgment" means damages recovered, if any, but does
 319 not include any amount awarded for attorney fees, costs, or

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320 interest.

321 (3) NOTICE.-

322 (a) As a condition precedent to filing a suit under a
 323 property insurance policy, a claimant must provide the insurer a
 324 written notice of intent to initiate litigation in accordance
 325 with this section. Such notice must be served by certified mail,
 326 return receipt requested, or electronic delivery at least 60
 327 days before filing suit. However, such notice may not be served
 328 before the insurer has made a determination of coverage under s.
 329 627.70131. An attorney or other representative of the claimant
 330 who provides such notice must provide a copy of the notice to
 331 the claimant. The notice and any copy must specify:

332 1. That the notice is being provided pursuant to this
 333 section;

334 2. The alleged acts or omissions of the insurer giving rise
 335 to the action;

336 3. The demand;

337 4. The amount of reasonable and necessary attorney fees
 338 incurred by the claimant, to be calculated by multiplying the
 339 number of hours actually worked on the claim as of the date of
 340 the notice by the claimant's attorney by a reasonable hourly
 341 rate; and

342 5. If provided by an attorney or other representative, that
 343 a copy of the notice was provided to the claimant.

344 (b) As a precondition to filing suit, an assignee also
 345 must:

346 1. Comply with s. 627.7152; and

347 2. Concurrent with the notice, provide the named insured,
 348 the insurer, and the assignor, if not the named insured, a

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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.

(c) A notice of intent to initiate litigation must be served within the time limits provided in s. 95.11 and is not required if the action is a counterclaim. Service of a notice tolls the time limits provided in s. 95.11 for 60 days if such time limits will expire before the end of the 60-day notice period.

(d) A court must dismiss without prejudice any action relating to a claim for which a notice of intent to initiate litigation is given as required by this subsection if such action is commenced before the expiration of the 60-day notice period, is brought by an insurer to whom notice was given, and is against the claimant giving notice.

(4) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice provided pursuant to subsection (3) and the submissions provided pursuant to subparagraph (3)(b)2.:

(a) Are admissible as evidence in a civil action or an alternative dispute resolution proceeding relating to the claim for which the notice is given;

(b) Do not limit the evidence of attorney fees, damages, or loss which may be offered at trial; and

(c) Do not relieve any obligation that an insured or assignee has to give notice under any other provision of law.

(5) INSPECTION.—Within 30 days after an insurer receives notice pursuant to subsection (3), the insurer may send a

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written request to the insured or assignee to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property that is the subject of the claim. If reasonably possible, the insurer must complete the inspection, photography, and evaluation not later than 60 days after the insurer receives the presuit notice. After completing the inspection, the insurer must conduct an internal review by a duly-qualified claims adjuster to fairly and promptly evaluate the claim. This section does not limit any right provided in a property insurance policy or contract to inspect property.

(6) ABATEMENT.—

(a) In addition to taking any other action allowed by an insurance policy or a contract or by any other provision of law, an insurer may file a motion to abate a suit under a property insurance policy if the insurer:

1. Files the motion no later than the 30th day after the insurer filed an original answer in the court in which the action is pending; and

2. Did not receive notice required pursuant to subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(b) The court shall abate the action if the court finds that the insurer did not receive the notice required by subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

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(c) The action is abated without a court order beginning on the 11th day after the motion to abate is filed if the motion to abate:

1. Is verified and states that the insurer did not receive the notice required by subsection (3) or requested an inspection pursuant to subsection (5) but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim; and

2. Is not controverted by an affidavit filed by the insured or assignee within 10 days after the date the plea in abatement is filed.

(d) An affidavit filed pursuant to subparagraph (c)2. must include as an attachment a copy of the written notice sent pursuant to subsection (3) and state the date on which such notice was given.

(e) Abatement under this subsection continues until the later of:

1. Sixty days after the claimant provides notice to the insurer in compliance with subsection (3); or

2. Fifty days after the insurer completes the requested inspection, photographing, or evaluating of the property pursuant to subsection (5).

(f) If an action is abated pursuant to this subsection, a court may not compel during the abatement period participation in mediation pursuant to s. 627.7015 or neutral evaluation pursuant to s. 627.7074.

(7) ATTORNEY FEES.—

(a) Notwithstanding any other provision of law, in a suit arising under a residential or commercial property insurance

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policy, attorney fees and costs may be recovered by a claimant only pursuant to s. 57.105 and this subsection. Attorney fees may be awarded to a claimant under this section as follows:

1. If the demand-judgment quotient is greater than or equal to 0.8, the full amount of incurred attorney fees may be awarded.

2. If the demand-judgment quotient is equal to or greater than 0.2 but less than 0.8, the attorney fees must equal the product of multiplying the incurred attorney fees by the demand-judgment quotient.

3. If the demand-judgment quotient is less than 0.2, attorney fees may not be awarded.

(b) If an insurer pleads and proves that it did not receive notice that complies with subsection (3) and files such pleading no later than the 30th day after the insurer files an original answer in the court in which the action is pending, the court may not award to the claimant any incurred attorney fees for services rendered after the date on which the insurer files such pleading with the court.

(c) If a claimant commences an action in any court of this state based upon or including the same claim against the same adverse party that such insured or assignee has previously voluntarily dismissed in a court of this state, the court may order the insured or assignee to pay the attorney fees and costs of the adverse party resulting from the action previously voluntarily dismissed. The court shall stay the proceedings in the subsequent action until the insured or assignee has complied with the order.

Section 9. Section 627.70153, Florida Statutes, is created

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to read:

627.70153 Consolidation of residential property insurance actions.—Each party that is aware of ongoing multiple actions involving coverage provided under the same residential property insurance policy for the same property with the same owners must provide written notice to the court of the multiple actions. Upon notification of any party, the court may order that the actions be consolidated and transferred to the court having jurisdiction based on the total amount in controversy of all consolidated claims. If multiple cases are pending in circuit courts, the cases may be consolidated based on the date on which the first case was filed.

Section 10. Paragraphs (d) through (g) of subsection (1), paragraph (a) of subsection (2), and subsections (5), (9), and (10) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

~~(d) "Disputed amount" means the difference between the assignee's presuit settlement demand and the insurer's presuit settlement offer.~~

~~(e) "Judgment obtained" means damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest.~~

~~(f) "Presuit settlement demand" means the demand made by the assignee in the written notice of intent to initiate litigation as required by paragraph (9)(a).~~

~~(g) "Presuit settlement offer" means the offer made by the insurer in its written response to the notice of intent to initiate litigation as required by paragraph (9)(b).~~

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(2) (a) An assignment agreement must:

1. Be in writing and executed by and between the assignor and the assignee.

2. Contain a provision that allows the assignor to rescind the assignment agreement without a penalty or fee by submitting a written notice of rescission signed by the assignor to the assignee within 14 days after the execution of the agreement, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.

3. Contain a provision requiring the assignee to provide a copy of the executed assignment agreement to the insurer and the named insured within 3 business days after the date on which the assignment agreement is executed or the date on which work begins, whichever is earlier. Delivery of the copy of the assignment agreement to the insurer and the named insured may be made:

a. By personal service, overnight delivery, or electronic transmission, with evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the insurer or named insured, as applicable; or

b. To the location designated for the insurer's receipt of such agreements as specified in the policy.

4. Contain a written, itemized, per-unit cost estimate of the services to be performed by the assignee.

5. Relate only to work to be performed by the assignee for services to protect, repair, restore, or replace a dwelling or

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structure or to mitigate against further damage to such property.

6. Contain the following notice in 18-point uppercase and boldfaced type:

YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

7. Contain a provision requiring the assignee to indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits.

(5) An assignment agreement and this section do not modify

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or eliminate:

(a) Any term, condition, or defense relating to any managed repair arrangement provided in the policy.

(b) The right of an insurer to communicate directly with the named insured if such insured is not represented by counsel.

~~(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, or electronic delivery 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.~~

~~(b) An insurer must respond in writing to the notice within 10 business days after receiving the notice specified in paragraph (a) by making a presuit settlement offer or requiring the assignee to participate in appraisal or other method of alternative dispute resolution under the policy. An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance~~

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with the Florida Insurance Code.

~~(10) Notwithstanding any other provision of law, in a suit related to an assignment agreement for post-loss claims arising under a residential or commercial property insurance policy, attorney fees and costs may be recovered by an assignee only under s. 57.105 and this subsection.~~

~~(a) If the difference between the judgment obtained by the assignee and the presuit settlement offer is:~~

~~1. Less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees.~~

~~2. At least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees.~~

~~3. At least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.~~

~~(b) If the insurer fails to inspect the property or provide written or oral authorization for repairs within 7 calendar days after the first notice of loss, the insurer waives its right to an award of attorney fees under this subsection. If the failure to inspect the property or provide written or oral authorization for repairs is the result of an event for which the Governor had declared a state of emergency under s. 252.36, factors beyond the control of the insurer which reasonably prevented an inspection or written or oral authorization for repairs, or the named insured's failure or inability to allow an inspection of the property after a request by the insurer, the insurer does not waive its right to an award of attorney fees under this subsection.~~

~~(c) If an assignee commences an action in any court of this~~

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~~state based upon or including the same claim against the same adverse party that such assignee has previously voluntarily dismissed in a court of this state, the court may order the assignee to pay the attorney fees and costs of the adverse party resulting from the action previously voluntarily dismissed. The court shall stay the proceedings in the subsequent action until the assignee has complied with the order.~~

Section 11. The Supreme Court of Florida is requested to amend the Rules of Professional Conduct of the Rules Regulating The Florida Bar to require that, when a recovery judgment has been awarded in a residential or commercial residential property claim, each participating lawyer or law firm must provide closing statements itemizing the amount of the fee received by each participating lawyer or law firm, costs, and expenses to the Department of Financial Services.

Section 12. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR JIM BOYD
21st District

March 11, 2021

Senator Kathleen Passidomo
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Madam Chair Passidomo:

I respectfully request that CS/CS/SB 76: Property Insurance, be scheduled for a hearing in the Committee on Rules, at your earliest convenience. CS/CS/SB 76, updates roofing policies in an attempt to improve the deteriorating property insurance market.

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,

A handwritten signature in cursive script, appearing to read "Jim Boyd".

Jim Boyd

cc: John Phelps
Cynthia Futch

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Rules
ITEM: CS/CS/SB 76
FINAL ACTION:
MEETING DATE: Thursday, March 18, 2021
TIME: 9:00—11:00 a.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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	3/18/2021 Amendment 547800 to Amendment 670126	4	3/18/2021 Amendment 546412 to Amendment 670126	5	3/18/2021 Late Filed Amendment 861760 to Amendment 670126 Thurston	6	3/18/2021 Late Filed Amendment 706816 to Amendment 670126 Thurston	7
SENATORS	F Farmer		F Farmer		L Late		L Late	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Albritton								
Baxley								
Bean								
Book								
Bracy								
Brandes								
Diaz								
Farmer								
Gibson								
Gruters								
Hutson								
Mayfield								
Powell								
Stargel								
Thurston								
Garcia, VICE CHAIR								
Passidomo, CHAIR								
TOTALS	- Yea	UNF Nay	- Yea	UNF Nay	- Yea	UNF Nay	- Yea	UNF Nay

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COMMITTEE: Rules
ITEM: CS/CS/SB 76
FINAL ACTION:
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	3/18/2021 Late Filed Amendment 518486 to Amendment 670126 Brandes	8	3/18/2021 Late Filed Amendment 798322 to Amendment 670126 Gibson	9	3/18/2021 Late Filed Amendment 651414 to Amendment 670126 Gibson	10	3/18/2021 Late Filed Amendment 128746 to Amendment 670126 Farmer	11
SENATORS	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Albritton				X		X		
Baxley				X		X		
Bean				X				
Book			X		X			
Bracy			X		X			
Brandes				X		X		
Diaz				X		X		
Farmer			X		X			
Gibson			X		X			
Gruters								
Hutson				X		X		
Mayfield				X		X		
Powell			X		X			
Stargel				X		X		
Thurston			X		X			
Garcia, VICE CHAIR				X		X		
Passidomo, CHAIR				X		X		
TOTALS	- Yea	WD Nay	6 Yea	10 Nay	6 Yea	9 Nay	- Yea	WD Nay

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OO=Out of Order
AV=Abstain from Voting

COMMITTEE: Rules
ITEM: CS/CS/SB 76
FINAL ACTION:
MEETING DATE: Thursday, March 18, 2021
TIME: 9:00—11:00 a.m.
PLACE: 412 Knott Building

	3/18/2021 Amendment 963428	12	3/18/2021 Amendment 650462	13	3/18/2021 Amendment 393102	14	3/18/2021 Amendment 971154	15
	Thurston		Farmer		Thurston		Thurston	
SENATORS	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Albritton								
Baxley								
Bean								
Book								
Bracy								
Brandes								
Diaz								
Farmer								
Gibson								
Gruters								
Hutson								
Mayfield								
Powell								
Stargel								
Thurston								
Garcia, VICE CHAIR								
Passidomo, CHAIR								
TOTALS	- Yea	OO Nay	- Yea	OO Nay	- Yea	OO Nay	- Yea	OO Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

COMMITTEE: Rules
ITEM: CS/CS/SB 76
FINAL ACTION:
MEETING DATE: Thursday, March 18, 2021
TIME: 9:00—11:00 a.m.
PLACE: 412 Knott Building

	3/18/2021 Amendment 397328	16	3/18/2021 Late Filed Amendment 503350	17	3/18/2021 Late Filed Amendment 934564	18		
SENATORS	Farmer		Gibson		Gibson			
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Albritton								
Baxley								
Bean								
Book								
Bracy								
Brandes								
Diaz								
Farmer								
Gibson								
Gruters								
Hutson								
Mayfield								
Powell								
Stargel								
Thurston								
Garcia, VICE CHAIR								
Passidomo, CHAIR								
TOTALS	- Yea	OO Nay	- Yea	OO Nay	- Yea	OO Nay		

CODES: FAV=Favorable
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RCS=Replaced by Committee Substitute
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TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

CS/CS/SB 76

Bill Number (if applicable)

727572

Topic Property Insurance

Amendment Barcode (if applicable)

Name Amy Boggs

Job Title Attorney

Address 4554 Central Avenue, Suite L

Phone 727-954-8833

Street

St. Petersburg

FL

33711

Email aboggs@boggslawgroup.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Association Property Insurance 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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/18/21

Meeting Date

76

Bill Number (if applicable)

727572

Topic Homeowner/Hurricane Michael

Amendment Barcode (if applicable)

Name Joe Busby

Job Title Retired

Address 4879 Magnolia Rd

Phone 850-209-1313

Street

Marianna

FL

32448

Email joebusby@wfeca.net

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18

Meeting Date

SB 76

Bill Number (if applicable)

707572

Amendment Barcode (if applicable)

(Farmer)

Topic

Property Insurance

Name

Reggie Garcia

Job Title

Address

PO Box 11069

Street

Phone

933-7150

City

Tallahassee, Fla. 32302

State

Zip

Email

reggiegarcia.law@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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

CS/CS/SB 76

Bill Number (if applicable)

547800

Amendment Barcode (if applicable)

Topic Property Insurance

Name Amy Boggs

Job Title Attorney

Address 4554 Central Avenue, Suite L

Phone 727-954-8833

Street

St. Petersburg

FL

33711

Email aboggs@boggslawgroup.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Association Property Insurance 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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/21

Meeting Date

76

Bill Number (if applicable)

547800

Amendment Barcode (if applicable)

Topic Homeowner/Hurricane Michael

Name Joe Busby

Job Title Retired

Address 4879 Magnolia Rd

Street

Marianna

City

FL

State

32448

Zip

Phone 850-209-1313

Email joebusby@wfeca.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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This information was not read
into the record by the Chair

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

CS/CS/SB 76

Bill Number (if applicable)

861760

Amendment Barcode (if applicable)

Topic Property Insurance

Name Amy Boggs

Job Title Attorney

Address 4554 Central Avenue, Suite L

Phone 727-954-8833

Street

St. Petersburg

FL

33711

Email aboggs@boggslawgroup.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Association Property Insurance 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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03.18.21

Meeting Date

76

Bill Number (if applicable)

861760

Topic Property Insurance

Amendment Barcode (if applicable)

Name Steven Richardson

Job Title

Address 2873 Remington Green Cir

Phone (850) 518-1036

Street

Tallahassee

FL

32308

Email steven.richardson@csklegal.com

City

State

Zip

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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03.18.21

Meeting Date

76

Bill Number (if applicable)

706816

Amendment Barcode (if applicable)

Topic Property Insurance

Name Steven Richardson

Job Title _____

Address 2873 Remington Green Cir

Street

Tallahassee

City

FL

State

32308

Zip

Phone (850) 518-1036

Email steven.richardson@csklegal.com

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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

CS/CS/SB 76

Bill Number (if applicable)

706816

Amendment Barcode (if applicable)

Topic Property Insurance

Name Amy Boggs

Job Title Attorney

Address 4554 Central Avenue, Suite L

Phone 727-954-8833

Street

St. Petersburg

FL

33711

Email aboggs@boggslawgroup.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Association Property Insurance 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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/21

Meeting Date

76

Bill Number (if applicable)

706816

Amendment Barcode (if applicable)

Topic Homeowner/Hurricane Michael

Name Joe Busby

Job Title Retired

Address 4879 Magnolia Rd

Street

Marianna

City

FL

State

32448

Zip

Phone 850-209-1313

Email joebusby@wfeca.net

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/21

Meeting Date

SB76

Bill Number (if applicable)

706816

Amendment Barcode (if applicable)

Topic Property Insurance

Name Rosie Garcia

Job Title —

Address PO Box 11069

Street

Tallahassee, Fla.

City

State

32302

Zip

Phone 933-7150

Email seppigarcia@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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

CS/CS/SB 76

Bill Number (if applicable)

798322

Topic Property Insurance

Amendment Barcode (if applicable)

Name Amy Boggs

Job Title Attorney

Address 4554 Central Avenue, Suite L

Phone 727-954-8833

Street

St. Petersburg

FL

33711

City

State

Zip

Email aboggs@boggslawgroup.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Association Property Insurance 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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

CS/CS/SB 76

Bill Number (if applicable)

651414

Topic Property Insurance

Amendment Barcode (if applicable)

Name Amy Boggs

Job Title Attorney

Address 4554 Central Avenue, Suite L

Phone 727-954-8833

Street

St. Petersburg

FL

33711

City

State

Zip

Email aboggs@boggslawgroup.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Association Property Insurance 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/21
Meeting Date

SB76
Bill Number (if applicable)

657414
Amendment Barcode (if applicable)

Topic SB76

Name Richie Kidwell

Job Title President

Address 941 W Morse Blvd
Street

Winter Park FL 32789
City State Zip

Phone 401-233-0493

Email info@RAFlorida.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Restoration Association of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18

Meeting Date

76

Bill Number (if applicable)

651414

Amendment Barcode (if applicable)

Sen. Gibson

Topic Property Insurance

Name Roscoe Garcia

Job Title _____

Address P.O. Box 11069

Street

City

Tallahassee, Fla.

State

Zip

32302

Phone 933-7150

Email regsgarcia@law@

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03.18.21

Meeting Date

76

Bill Number (if applicable)

670126

Topic Property Insurance

Amendment Barcode (if applicable)

Name Steven Richardson

Job Title

Address 2873 Remington Green Cir

Phone (850) 518-1036

Street

Tallahassee

FL

32308

Email steven.richardson@csklegal.com

City

State

Zip

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.

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into the record by the Chair

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/21

Meeting Date

76

Bill Number (if applicable)

670126

Amendment Barcode (if applicable)

Topic Homeowner/Hurricane Michael

Name Joe Busby

Job Title Retired

Address 4879 Magnolia Rd

Street

Marianna

City

FL

State

32448

Zip

Phone 850-209-1313

Email joebusby@wfeca.net

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/21

Meeting Date

76

Bill Number (if applicable)

670126

Amendment Barcode (if applicable)

Topic Property Insurance

Name Chris Dawson

Job Title Attorney

Address 301 E Pine St. Ste. 1400
Street

Phone 407 843 8880

Orlando FL 32801
City State Zip

Email chris.dawson@gray-rubinson.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FL Roofing & Sheet Metal Contractors Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

CS/CS/SB 76

Bill Number (if applicable)

670126

Topic Property Insurance

Amendment Barcode (if applicable)

Name Amy Boggs

Job Title Attorney

Address 4554 Central Avenue, Suite L

Phone 727-954-8833

Street

St. Petersburg

FL

33711

Email aboggs@boggslawgroup.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Association Property Insurance Section

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

CS/CS/SB 76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Amy Boggs

Job Title Attorney

Address 4554 Central Avenue, Suite L

Phone 727-954-8833

Street

St. Petersburg

FL

33711

Email aboggs@boggslawgroup.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Association Property Insurance 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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03.18.21

Meeting Date

76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Steven Richardson

Job Title _____

Address 2873 Remington Green Cir

Phone (850) 518-1036

Street

Tallahassee

FL

32308

Email steven.richardson@csklegal.com

City

State

Zip

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/21

Meeting Date

SB76

Bill Number (if applicable)

Topic

SB76

Amendment Barcode (if applicable)

Name

Richie Kidwell

Job Title

Address

941 W Morse Blvd

Street

Phone

407-233-0493

City

Winter Park FL 32789

State

Zip

Email

info@RAFlorida.org

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Restoration Association of FL

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/21

Meeting Date

Bill Number (if applicable)

Topic Senate Bill 76

Amendment Barcode (if applicable)

Name Patrick R. Carr

Job Title Partner, My Claims Care, LLC

Address 1969 Summer Club Dr.
Street

Phone 407-766-9701

Oviedo
City

FL
State

32765
Zip

Email pcarr@myclaimscare.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Homeowners / Roofing contractors / My Claims Care

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/18/2021

Meeting Date

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

SB 76

Bill Number (if applicable)

Topic SB 76

Amendment Barcode (if applicable)

Name Winston Taitt

Job Title Attorney

Address 121 S. Orange Ave

Street

Phone 407-902-9254

Email wtaitt@taittllaw.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Homeowners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/21
Meeting Date

76
Bill Number (if applicable)

Topic Senate Bill 76

Amendment Barcode (if applicable)

Name Agatha Hall

Job Title Business Development Manager for Hippo Roofing

CCC1331992

Address 2774 N Harbor City Blvd
Street

Phone 321-305-3962

Melbourne FL 32935
City State Zip

Email aggi@hipporoof.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Licensed FLORIDA Roofing Contractors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/21

Meeting Date

SB76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Rossie Marcus

Job Title _____

Address PO Box 11069

Phone 933-7150

Tallahassee, Fla. 32302

Street

City

State

Zip

Email rossiegarza@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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2021

Meeting Date

SB 76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title Lobbyist

Address PO Box 11247

Phone 8504254000

Street

Tallahassee

FL

32302

Email tim@meenanlawfirm.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Tower Hill Insurance Group and NAIFA-FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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Rules 9(a)

3/18/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/21
Meeting Date

76
Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief of Communications + Legislative Affairs

Address 2101 Maryland Circle

Phone 850-513-3744

Street

Tallahassee FL

State

32312

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Citizens Property Insurance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/21

Meeting Date

76

Bill Number (if applicable)

Topic Homeowner/Hurricane Michael

Amendment Barcode (if applicable)

Name Joe Busby

Job Title Retired

Address 4879 Magnolia Rd

Phone 850-209-1313

Street

Marianna

FL

32448

Email joebusby@wfeca.net

City

State

Zip

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

3-18-21
Meeting Date

76
Bill Number (if applicable)

Topic ROOF REPLACEMENT/INSURANCE

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street

Phone 305-979-7110

Street

Miami

FL

33156

Email jmm2@miamidade.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18

Meeting Date

76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Director of Government Affairs

Address 3159 Shamrock St. S.

Phone 863-698-8820

Street

Tallahassee

City

FL

State

32309

Zip

Email bvmurphy@faia.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Assoc. of Insurance Agents

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/18/21

Meeting Date

76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough Street

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/18/21

Meeting Date

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

76

Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name MICHAEL CARLSON

Job Title President

Address 215 S. Monroe St. Ste. 835

Phone 850 544 9576

Street

Tall. FL 32301

City

State

Zip

Email Michael.carlson@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 FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 96

INTRODUCER: Children, Families, and Elder Affairs Committee and Senators Book and Brodeur

SUBJECT: Child Welfare

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Moody</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2. <u>Sneed</u>	<u>Sadberry</u>	<u>AP</u>	Favorable
3. <u>Moody</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 96 reorganizes and clarifies reporting requirements and penalties, and adds requirements relating to reporting, data collection and analysis, animal abuse, sexual abuse training and response teams, multidisciplinary legal representation teams, and other provisions.

The bill requires that the central abuse hotline keep statistical reports relating to reports of child abuse and sexual abuse that are reported from or occur in specified educational settings. Further, the bill provides that a person required to report to the hotline is not relieved by notifying his or her supervisor.

If the Department of Education (DOE) determines that any instructional personnel or school administrator knowingly failed to report known or suspected child abuse as required and the Education Practices Commission (EPC) has issued a final order for a previous instance of failure to report by the individual, the bill requires a minimum of a 1 year suspension of the instructional personnel's or school administrator's educator certificate.

The bill requires an immediate onsite investigation to be conducted by a critical incident rapid response team (CIRRT) for all reports to the hotline containing allegations of sexual abuse of a child under certain circumstances. It also requires a representative from a child advocacy center to be included on the multiagency team conducting the investigation. The bill adds members of standing or select legislative committees to be provided access to confidential reports and records in cases of child abuse and neglect within 7 business days of the request.

The bill creates a new section of the Florida Statutes relating to reporting animal cruelty. In recognition of the strong link between child abuse and animal cruelty, the bill requires any person who is required to investigate child abuse, abandonment, or neglect and who knows or has reasonable cause to suspect animal cruelty, to report to his or her supervisor within 72 hours for submission to a local animal control agency.

The bill provides penalties for knowingly and willfully failing to report animal abuse. It also requires training for child protective investigators and animal control officers. The bill includes animal control officers and other agents to the list of persons required to disclose their name to the hotline.

The bill amends current law related to sexual abuse of animals to update terminology, include activities specifically related to children and activities involving the sexual abuse of animals, and increase the penalty for violations from a first degree misdemeanor to a third degree felony. The bill adds the offense of sexual activities involving animals as a Level 6 on the Offense Severity Ranking Chart.

The bill authorizes each Office of Criminal Conflict and Civil Regional Council (OCCCRC) to establish multidisciplinary legal representation of parents and children in the dependency system. It requires the Department of Children and Families (DCF) to collaborate on implementation and provide existing federal matching funding. Information will be reported annually to the Office of Program Policy Analysis (OPPAGA), who must submit an annual report to the Governor, the President of the Senate and the Speaker of the House of Representatives.

The bill adds requirements for the DCF related to resources and support for foster parents and relative caregivers, including the establishment of the current Foster Information Center.

The DCF projects that the bill will have a significant negative fiscal impact on state government relating to the expansion of the use of the CIRRT process by requiring deployment for reports of allegations of sexual abuse of a child if the child or another child in his or her family was the subject of a verified report of abuse or neglect in the previous 12 months. The DCF¹ estimates the need for an additional 107 FTE positions to conduct the additional CIRRTs required by the bill. The department anticipates the recurring cost for the additional staff to be \$10.8 million. Additionally, to the extent that the OCCCRCs establish multidisciplinary legal representation programs, federal matching funds may be earned by the OCCCRCs via the DCF Title IV-E federal grant. See section V. Fiscal Impact Statement

The bill is effective October 1, 2021.

II. Present Situation:

Refer to Section III (Effect of Proposed Changes) for discussion of the relevant portions of current law.

¹ The DCF, *Agency Analysis for SB 96*, p. 9, March 5, 2021 (on file with the Senate Appropriations Subcommittee on Health and Human Services).

III. Effect of Proposed Changes:

Reporting Requirements and Intake Process (Sections 1, 2, 5, and 18)

In 1962, Dr. C. Henry Kempe and his colleagues were among the first to recognize and publicize their findings relating to child abuse and neglect in a paper titled “The Battered-Child Syndrome”.² This paper, amendments to the Social Security Act of 1935, and two small meetings held by the Children’s Bureau (CB) were defining moments in that year which lead to four states implementing reporting laws in 1963 and all states implementing them by 1967.³

In 1962, the Social Security Act of 1935 was amended to provide money to expand child welfare services. The federal Child Abuse Prevention and Treatment Act (CAPTA)⁴ enacted in 1974 authorized federal funds to improve the state response to physical abuse and neglect, which was most recently reauthorized in 2010⁵ and has been amended several times, most recently in 2019.^{6,7} CAPTA requires states to submit a plan to receive grant funds which must contain provisions and procedures for an individual to report known and suspected instances of child abuse and neglect, including mandatory reporting laws of such instances.⁸ Florida law currently provides for a central abuse hotline and mandatory reporting requirements under s. 39.201, F.S.

Central Abuse Hotline

The DCF is required to operate and maintain a central abuse hotline⁹ to receive mandatory reports of known or suspected instances of child abuse,¹⁰ abandonment,¹¹ or neglect,¹² or

² Kempe, Henry, *The Battered Child Syndrome*, available at https://www.kempe.org/wp-content/uploads/2015/01/The_Battered_Child_Syndrome.pdf; the Kempe Center for the Prevention and Treatment of Child Abuse and Neglect, *History Innovating for 45 Years*, available at <https://www.kempe.org/about/history/#:~:text=Innovating%20for%2045%20Years%20In%201962%2C%20Dr.%20C..awareness%20and%20exposing%20the%20reality%20of%20child%20abuse> (all sites last visited March 1, 2021).

³ Myers, John, *A Short History of Child Protection in America*, September 2008, p. 10, available at https://us.sagepub.com/sites/default/files/upm-binaries/35363_Chapter1.pdf (last visited March 1, 2021).

⁴ Pub.L. 93-247.

⁵ Pub.L. 111-320.

⁶ Pub.L. 115-424; Children’s Bureau, *Factsheet: About CAPTA: A Legislative History*, February 2019, p. 1, available at <https://www.childwelfare.gov/pubpdfs/about.pdf> (last visited March 1, 2021).

⁷ 42 U.S.C. ch. 67.

⁸ 42 U.S.C. s. 5106a(1)(A) and (b)(2)(B)(i).

⁹ Hereinafter cited as “hotline”. Fla. Admin. Code R. 65C-30.001, defines “Florida Abuse Hotline” to mean the DCF’s central abuse reporting intake assessment center, which receives and processes reports of known or suspected child abuse, neglect or abandonment 24 hours a day, seven days a week.

¹⁰ 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.

¹¹ 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.

¹² 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

instances when a child does not have a parent, legal custodian or adult relative available to provide supervision and care.¹³ The hotline must operate 24 hours a day, 7 days a week, and accept reports in writing, via fax or web-based reporting¹⁴ or web-based chat, or through a single statewide toll-free telephone number.¹⁵ The DCF is required to conduct a study to determine the feasibility of using text and short message service formats to receive reports.¹⁶ The DCF is required to promote awareness of the hotline.¹⁷

The hotline must operate in a manner that will allow the DCF to:

- Immediately identify prior cases or reports through utilizing a tracking system;
- Monitor and evaluate the effectiveness of the DCF's reporting and investigation program through the development and use of statistical and other information;
- Track critical steps in the investigative process to ensure compliance with all reporting requirements;
- Collect, analyze, and produce statistical reports, including an aggregate report on patterns of child abuse, abandonment, and neglect, including child-on-child sexual abuse;
- Prepare separate reports, as required under s. 39.201(4)(d), F.S., of child abuse and sexual abuse which are reported from or occurred on the campus of any Florida College System institution,¹⁸ state university,¹⁹ or nonpublic college, university, or school, as defined in ss. 1000.21 and 1005.02, F.S.;
- Provide resources for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect; and
- Initiate and enter into agreements with other states to gather and share information contained in reports on child maltreatment.²⁰

Information received by the hotline may not be used for employment screening except in specified instances.²¹ As part of the DCF's quality assurance program, it is required to review hotline reports to analyze when there are three or more unaccepted reports to identify patterns and initiate a case for investigation, if warranted.²²

impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

¹³ Section 39.201(4), F.S.

¹⁴ Section 39.201(2)(j), F.S., requires the DCF to update the web-based reporting form to include fields for specified information and allow a reporter to save and return to a report at a later time.

¹⁵ Section 39.201(4) and (5), F.S.

¹⁶ Section 39.201(2)(k), F.S.

¹⁷ Section 39.201(4), F.S.

¹⁸ Section 1000.21(3), F.S., provides the term "Florida College System institution" except as otherwise specifically provided, includes a list of specified public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of the institution, including, for instance, Eastern Florida State College, which serves Brevard County, and Broward College, which serves Broward County.

¹⁹ Section 1000.21(6), F.S., provides the term "State University", except as otherwise specifically provided, includes a list of specified institutions and any branch campuses, centers, or other affiliates of the institution, including, for instance, The University of Florida, The Florida State University and The Florida Agricultural and Mechanical University.

²⁰ Section 39.201(4)(a) through (f), F.S.

²¹ Section 39.201(6), F.S.

²² Section 39.201(7), F.S.

Mandatory Reporting

Current law requires an individual to make a report to the hotline if he or she knows or has reasonable cause to suspect that:

- A child has been abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare or that a child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;
- A child has been abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare; or
- A child is the victim of sexual abuse or the victim of a known or suspected juvenile sexual offender.²³

Florida law provides for exceptions to reporting requirements in specified circumstances:²⁴

- Professionals who are hired or contracted by the DCF to provide treatment or counseling services to a child that are the subject of the abuse, abandonment, or neglect;
- An officer or employee of the judicial branch when the child is currently being investigated, is the subject of an existing dependency case, or the matter has previously been reported to the DCF; or
- An officer or employee of law enforcement when the incident under investigation was reported to law enforcement by the hotline.²⁵

Chapter 39, F.S., does not require a reporter to disclose his or her identity to the hotline, but the hotline personnel must receive training in encouraging such disclosure.²⁶ There is a list of specified reporters, however, which must disclose his or her name.²⁷ The DCF is required to have technology that allows it to automatically obtain the number from which the reporter calls or faxes the report, or the internet protocol address from which the report is made.²⁸ Reporter names and numbers are entered into the record of the report, but are held confidential.²⁹ Hotline counselors must inform reporters of these confidentiality provisions.³⁰

Any person required to report or investigate child abuse, abandonment or neglect cases, and has reasonable cause to suspect that a child died as a result of such treatment, must report his or her suspicion to the medical examiner. The examiner must accept the report for investigation and

²³ Section 39.201(1), F.S.

²⁴ Section 39.201(1)(g), F.S., provides that nothing in ch. 39, F.S., may be construed to remove or reduce any person's reporting requirement, including any employee of a community-based care provider.

²⁵ Section 39.201(1), F.S.

²⁶ Section 39.201(2)(h), F.S.

²⁷ Section 39.201(1)(d), F.S., requires the following occupational categories to disclose their names: physicians, osteopathic physician, medical examiner, chiropractic physician, nurse or hospital personnel engaged in the admission, examination, care or treatment of persons; health or mental health professional not already listed; practitioner who relies solely on spiritual means for healing; school teacher or other school official or personnel; social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker; law enforcement officer; or judge.

²⁸ Section 39.201(2)(h), F.S.

²⁹ *Id.* See also s. 39.202, F.S., which is discussed in more detail below. Section 39.201(2)(i), F.S., provides that the DCF must record all incoming and outgoing calls to the hotline, and must keep an electronic copy which must only be disclosed to law enforcement, state attorney, or the DCF for purposes of conducting investigations pursuant to s. 39.205, F.S., or s. 39.206, F.S.

³⁰ *Id.*

report any findings to the designated agencies.³¹ Autopsy reports are not subject to confidentiality requirements provided for in s. 39.202, F.S.³²

Initial Intake Process

A report to the hotline is the first step that must be taken to initiate a safety assessment and an investigation.³³ The type of alleged abuse and whether the allegation is against a parent, legal custodian, caregiver, or other person responsible for the child's welfare will determine the steps that the DCF is required to take.³⁴

When allegations are made against a parent, legal custodian, caregiver,³⁵ or other person responsible for the child's welfare,³⁶ the hotline counselor must assess whether the report meets the statutory definition of abuse, abandonment, or neglect.³⁷ If they do, the report is accepted for a protective investigation.³⁸ All reports made by an emergency room physician must be investigated.³⁹ At the same time, the DCF makes a determination regarding the timeline for which a protective investigation must be initiated including, in part:

- Immediately if:
 - It appears the child's immediate safety or well-being is endangered;
 - The family may flee or the child will be unavailable for purposes of conducting a child protective investigation; or
 - The facts otherwise so warrant; or
- Within 24 hours in all other child abuse, abandonment, or neglect cases.⁴⁰

Section 39.201(5), F.S., provides that an alleged perpetrator in an institutional investigation may be represented by an attorney or accompanied by another person if specified conditions are met, but the absence of such person must not prevent the DCF from conducting an investigation. If an institution is not operating and the child is unable to be located, the investigation must begin immediately upon the resumption of operations. The DCF must provide all investigative reports relating to the abuse report to any state attorney or law enforcement agency upon request.

³¹ Section 39.201(3), F.S.

³² *Id.*

³³ Section 39.201(4), F.S.

³⁴ See s. 39.201(2)(a) and (b), F.S.

³⁵ Section 39.01(10), F.S., defines "caregiver" as the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (54).

³⁶ Section 39.01(54), F.S., defines "other person responsible for a child's welfare" to include the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice, with exceptions of specified personnel working in their official capacity.

Section 39.201(2)(f), F.S., requires reports of known or suspected institutional child abuse or neglect to be made in the same manner as other reports under s. 39.201, F.S.

³⁷ Section 39.201(2)(a), F.S.

³⁸ *Id.*

³⁹ Section 39.201(2)(l), F.S.

⁴⁰ Section 39.201(5), F.S.

There are instances when the DCF is immediately required to refer the report to local law enforcement,⁴¹ and other instances when the DCF is required to provide voluntary community services.⁴² The DCF has other specific requirements with respect to reports of the following:

- Reports involving juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior, including to:
 - Immediately electronically transfer the report to the appropriate county sheriff's office;
 - Conduct an assessment and assist the family with receiving appropriate services;
 - Submit a written report within 48 hours to the county sheriff's office; and
 - Inform the court of the allegations if the child is in the custody or under the protective supervision of the DCF.
- Reports of abuse, abandonment, or neglect which occur out-of-state and the alleged perpetrator and victim child are out-of-state;⁴³ and
- Reports of a surrendered newborn infant.^{44, 45}

Penalties for Failing to Report Child Abuse

Current law provides that a person is subject to penalties for failing to report known or suspected child abuse, abandonment, or neglect, or for willfully preventing another person from making such report.⁴⁶ Any person who violates this law commits a third degree felony.⁴⁷

Florida law also provides that a person who is 18 years of age or older and lives in the same house as a child who is known or suspected to be a victim of child abuse, neglect, or aggravated child abuse, and knowingly and willfully fails to report the child abuse, commits a third degree felony, unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist.⁴⁸

Educational entities, including Florida College System institutions, state universities, or nonpublic colleges, universities or schools, and their administrators, are also currently subject to

⁴¹ See s. 39.201(2)(b) and (e), F.S., which provides that reports of abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, and reports involving impregnation of a child under 16 years old by a person 21 years of age or older, must be immediately reported to the appropriate county sheriff.

⁴² See s. 39.201(2)(a), F.S., which permits the hotline to accept a call from a parent or legal custodian seeking assistance which does not meet one of these statutory definitions to prevent a future risk of harm to a child and the DCF may provide voluntary community services if a need for them exists.

⁴³ Section 39.201(2)(d), F.S., provides that unless the child is currently being evaluated in a medical facility in Florida, the hotline must not accept the report but is required to transfer the information to the appropriate state or country. If the child is being currently evaluated in a medical facility in Florida, the hotline must accept the report or call for an investigation and transfer the information to the appropriate state or country.

⁴⁴ Section 383.50, F.S., provides that "newborn infant" means a child who a licensed physician reasonably believes is approximately 7 days old or younger at the time the child is left at a hospital, emergency medical services station, or fire station.

⁴⁵ Section 39.201(2)(g), F.S., provides that the DCF must make and receive reports of surrendered newborn infants, refer the caller to a licensed child-placing agency on a rotating basis, and comply with the requirements under s. 39.395, F.S., including, in part, immediately beginning an investigation if there is evidence of any abuse or neglect beyond the child being left at one of the designated facilities; if there is no other evidence, the report will not be considered abuse, abandonment or neglect under ch. 39, F.S.

⁴⁶ Section 39.205(1), F.S.

⁴⁷ Section 39.205(1), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

⁴⁸ Section 39.205(2), F.S.

penalties for failing to report child abuse, neglect or abandonment.⁴⁹ These schools or their administrators who knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect committed on the property of these schools or during an event sponsored by one of these schools, or who knowingly and willfully prevent another person from doing so, are subject to fines of \$1 million for each failure.⁵⁰ The fines are to be assessed as follows:

- A Florida College System institution subject to a fine shall be assessed by the State Board of Education.
- A state university subject to a fine shall be assessed by the Board of Governors.
- A nonpublic college, university, or school subject to a fine shall be assessed by the Commission for Independent Education.⁵¹

Education Practices Commissions

Current law provides the Education Practices Commission (EPC) with authority to discipline specified instructional personnel⁵² and school administrators⁵³ in various circumstances.⁵⁴ The EPC may, for instance, suspend an educator certificate for up to 5 years which would deny the holder of the certificate the right to teach or be employed in any capacity by a district school board or public school which would require direct contact with students for that time period.⁵⁵ There are a number of circumstances that are grounds for suspending an educator certificate.⁵⁶

Florida law is currently silent on whether the EPC must suspend an instructional personnel's or school administrators' educator certificate for failing to report child abuse, abandonment, or neglect as required under s. 39.201, F.S.

Effect of the Bill

The bill reorganizes, clarifies, and relocates, in part, s. 39.201, F.S., as follows:

- Section 39.101, F.S. provides for the following sections relating to the hotline:
 - Operation and maintenance in s. 39.101(1), F.S.;
 - Timelines for initiating an investigation in s. 39.101(2), F.S.;
 - Use of information received by the hotline in s. 39.101(3), F.S.; and

⁴⁹ Section 39.205(3), F.S.

⁵⁰ *Id.* Current law also provides that any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02, whose law enforcement agency fails to report known or suspected child abuse, abandonment, or neglect committed on the property of such schools or during an event sponsored by such schools are subject to fines of \$1 million for each such failure to report. Section 39.205(4), F.S.

⁵¹ Section 39.205(3), F.S.

⁵² Section 1012.01(2), F.S., defines "instructional personnel" as any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Instructional personnel include a specified list of personnel of K-12.

⁵³ Section 1012.01(3)(c), F.S., provides that "school administrators" includes school principals or school directors who are staff members performing the assigned activities as the administrative head of a school and to whom have been delegated responsibility for the coordination and administrative direction of the instructional and noninstructional activities of the school. This classification also includes career center directors and assistance principals who are staff members assisting the administrative head of the school. This classification also includes assistant principals for curriculum and administration.

⁵⁴ Section 1012.795(1), F.S.

⁵⁵ *Id.*

⁵⁶ See s. 1012.795(1), F.S., for a list of circumstances.

- Quality assurance in s. 39.101(4), F.S.
- Section 39.201, F.S., provides for the following sections relating to reporting requirements:
 - Required reporting in s. 39.201(1), F.S.;
 - Exceptions to reporting in s. 39.201(2), F.S.;
 - Additional circumstances relating to reporting in s. 39.201(3), F.S.;
 - Reports of child abuse, neglect or abandonment by a parent or caregiver in s. 39.201(4), F.S.;
 - Reports of sexual abuse of a child, juvenile sexual abuse, or a child who has exhibited inappropriate sexual behavior in s. 39.201(5), F.S.; and
 - Mandatory reports of a child death in s. 39.201(6), F.S.

Operation and Maintenance (Section 1)

The bill removes the DCF's responsibility to determine the feasibility of using text and short message service formats to receive reports.

The bill clarifies in s. 39.101(1)(a), F.S., that mandatory reports of child abuse, abandonment, or neglect must be made "immediately," whereas current law is silent on the time in which the reports must be made.

In addition to incidents that occur at a Florida College System institution or a state university, s. 39.101(3), F.S., adds to the list of schools or school events the DCF must collect and analyze data on, and include in the separate statistical reports of instances of child abuse and sexual abuse, as follows:

- On school premises;
- On school transportation;
- At school-sponsored off-campus events;
- At any school readiness program provider determined to be eligible under s. 1002.88, F.S.;
- At a private prekindergarten provider⁵⁷ or a public school prekindergarten provider;⁵⁸
- At a public K-12 school;⁵⁹
- At a private school;⁶⁰ or

⁵⁷ Section 1002.51(7), F.S., defines "private prekindergarten provider" as a provider other than a public school which is eligible to deliver the school-year prekindergarten program under s. 1002.55, F.S., or the summer prekindergarten program under s. 1002.61, F.S.

⁵⁸ Section 1002.51(8), F.S., states "public school prekindergarten provider" includes a traditional public school or a charter school that is eligible to deliver the school-year prekindergarten program under s. 1002.63, F.S., or the summer prekindergarten program under s. 1002.61, F.S.

⁵⁹ Section 1000.04(1), F.S., states "public K-12 schools" include charter schools and consist of kindergarten classes; elementary, middle, and high school grades and special classes; virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be operated under the control of district school boards; and lab schools operated under the control of state universities.

⁶⁰ Section 1002.01(2), F.S., defines "private school" as a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(13), F.S., or that gives preemployment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under ch. 1005, F.S. A private

- At any school.⁶¹

Reporting Requirements (Section 2)

The bill also amends s. 39.201(2)(c), F.S., relating to reports of juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior and relocates the law to a new s. 39.201(5), F.S., and requires the DCF to comply with the following new requirements:

- Provide services in the least restrictive environment possible and include child advocacy center services pursuant to s. 39.3035, F.S.,⁶² and sexual abuse treatment programs developed and coordinated by the Children's Medical Services Program pursuant to s. 39.303, F.S.;
- Conduct a protective investigation for allegations of childhood sexual abuse or juvenile sexual abuse which occur on or at the schools or school events listed in the newly created s. 39.101(3)(f)2., F.S.,⁶³ and requires that the investigation include an interview with the child's parent or legal guardian;
- Notify the DOE, the law enforcement agency having jurisdiction over the municipality or county in which the school is located and, as appropriate, the superintendent of the school district where the school is located, the administrative officer of the private school, or the owner of the private school readiness or prekindergarten provider; and
- Prepare a written report to the law enforcement agency within 3 working days after making the oral report. Any criminal investigation must be coordinated with the DCF's child protective investigation, whenever possible. Any interested person who has relevant information relating to the abuse may forward a statement to the DCF.

Section 39.201(1)(b)2.h., F.S., is created to require an animal control officer as defined in s. 828.27, F.S., or agent appointed under s. 828.03, F.S., to disclose his or her name when he or she makes a report to the hotline.

The Florida Administrative Code will have to be amended to define the role and responsibilities of the hotline, and rules regarding child protective investigators⁶⁴ will need to be amended to reflect new rules, definitions, and provisions contained in the proposed bill.

school may be a parochial, religious, denominational, for-profit, or nonprofit school, but does not include home education programs conducted in accordance with s. 1002.41, F.S. *Id.*

⁶¹ Section 1005.02(16), F.S., defines "school" as any nonpublic postsecondary noncollegiate educational institution, association, corporation, person, partnership, or organization of any type which: (a) offers to provide or provides any complete, or substantially complete, postsecondary program of instruction through the student's personal attendance; in the presence of an instructor; in a classroom, clinical, or other practicum setting; or through correspondence or other distance education; (b) represents, directly or by implication, that the instruction will qualify the student for employment in an occupation for which a degree is not required in order to practice in this state; (c) receives remuneration from the student or any other source based on the enrollment of a student or the number of students enrolled; or (d) offers to award or awards a diploma, regardless of whether it conducts instruction or receives remuneration.

⁶² See below for further discussion on this section of the Florida Statutes.

⁶³ SB 7000 (2020) included a provision in s. 39.201(1)(a)3.c., F.S., that is identical to the provision created in s. 39.201(3)(f)2., F.S., of this bill. The DCF reported in its agency analysis dated October 17, 2019 that the provision of s. 39.201(1)(a)3.c. codifies the current practice of conducting investigations of child-on-child sexual reports that occur at specified events or on school grounds. The DCF, *Agency Analysis for SB 7000*, p. 4, October 17, 2019 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as the "The DCF SB 7000 (2020) Analysis").

⁶⁴ Fla. Admin. Code R. 65C-30.001 defines a "child protective investigator" as a child welfare professional who is responsible for investigating alleged child maltreatment and conducting assessments regarding the safety of children.

Penalties (Sections 5 and 18)

The bill amends s. 39.205(4), F.S., to clarify that nothing in that section may be construed to remove or reduce the requirement of any faculty, staff, or other employee of the following institutions, to directly report a known or suspected case of child abuse, abandonment, neglect or the sexual abuse of a child⁶⁵ to the hotline:

- School readiness program provider determined to be eligible under s. 1002.88, F.S.;
- Private prekindergarten provider or a public school prekindergarten provider;
- Public K-12 school;
- Home education program or private school;
- Florida College System institution or a state university;
- College; or
- School.

The bill also provides that any school personnel reporting child abuse to their supervisor does not relieve them of the responsibility to directly report to the hotline.

The bill amends s. 1012.795, F.S., requiring the EPC to suspend for not less than one year the educator certificate of instructional personnel or school administrator if the DCF finds that he or she knowingly failed to report child abuse pursuant to s. 39.201, F.S., and the EPC has issued a final order in accordance with ch. 120, F.S., for a previous instance of failure to report by the individual.

Institutional Child Abuse, Abandonment, or Neglect (Section 7)

Florida law provides that the DCF must conduct a child protective investigation of any reported institutional child abuse, abandonment, or neglect.⁶⁶ Upon receipt of such report, the DCF must initiate an investigation within the time provided in s. 39.201(5), F.S., and must notify the state attorney, law enforcement agency, and licensing agency that must conduct a joint investigation, unless independent investigations are more feasible.⁶⁷

The DCF must give each agency who is conducting a joint investigation full access to the information it has gathered, and provide an oral and written report to the state attorney.⁶⁸ The

⁶⁵ Section 39.01(77), F.S., defines “sexual abuse of a child” for purposes of finding a child to be dependent as one or more of the following acts: (a) any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen; (b) any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person; (c) any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose; or (d) the intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator with specified exceptions; (f) the intentional exposure of the perpetrator’s genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose; or (g) the sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to engage in specified acts.

⁶⁶ Section 39.302(1), F.S.

⁶⁷ *Id.*

⁶⁸ *Id.*

state attorney must also provide the DCF with a copy of its report and conclusion on whether prosecution is justified and appropriate within 15 days after the investigation is completed.⁶⁹

If the person who is the subject of the report constitutes a continued threat of harm to the welfare of children by continued contact with them, the DCF may restrict his or her access by the least restrictive means necessary to ensure the children's safety. Such restriction may be effective for no more than 90 days without a judicial review.⁷⁰ The subject may petition the court for a judicial review and the court would be required to make specified findings.⁷¹ Upon completion of its protective investigation, the DCF may motion the court to continue the restrictive action against the subject to ensure the children's safety.⁷²

Effect of the Bill

The bill amends s. 39.302, F.S., with respect to institutional investigations to provide:

- The alleged perpetrator may be represented by an attorney or accompanied by another person if specified conditions are met;
- The absence of such person does not prevent the DCF from proceeding with other aspects of the investigation;
- If the institution is not operational and the child is unable to be located, the investigation must commence immediately upon the institution reopening; and
- The DCF must provide copies of all investigative reports to a state attorney or law enforcement agency upon request.

Critical Incident Rapid Response Team (Section 3)

The investigative process required by critical incident rapid response teams (CIRRT) was created by the Legislature in 2014,⁷³ with the purpose of identifying root causes to rapidly determine the need to change policies and practices related to child protection and improving Florida's child welfare system.⁷⁴ The CIRRT must immediately investigate certain child deaths or other serious incidents.⁷⁵ CIRRT reviews take into consideration the family's entire child welfare history, with specific attention to the most recent child welfare involvement and events surrounding the fatality, including the most recent verified incident of abuse or neglect. The DCF secretary has the discretion to direct an immediate investigation for other cases involving death or serious injury to a child.⁷⁶

Florida law outlines the duties and composition of the teams which require cooperative agreements with other entities and organizations to facilitate their work.⁷⁷ The DCF secretary is required to develop guidelines and provide training to the CIRRT, and direct them to conduct a

⁶⁹ Section 39.302(1), F.S.

⁷⁰ Section 39.302(2)(b), F.S.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Chapter 2014-224, Laws of Fla.

⁷⁴ Section 39.2015(1), F.S.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Section 39.2015(7), F.S.

root-cause analysis for each incident.⁷⁸ In addition, the secretary is directed to appoint an advisory committee to conduct an independent review of the CIRRT reports and submit quarterly reports to the secretary, who is required to provide the reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives.⁷⁹

The CIRRT reports must be published on the DCF website.⁸⁰ In 2021, the CIRRT has begun investigations of four deaths of children who have verified prior reports of the child or family in the past 12 months.⁸¹ Of the four investigations, a 1 ½ year old child's cause of death was determined to be drowning but the report is pending.⁸² The other three investigations are ongoing.⁸³

Effect of the Bill

The bill amends s. 39.2015, F.S., requiring the CIRRT to investigate allegations of sexual abuse of a child if the child or another child in his or her family was the subject of a verified report of suspected abuse or neglect during the previous 12 months, including any child who is in the custody of or under the supervision of the DCF. The bill also amends the composition of the CIRRT to include a representative from a child advocacy center pursuant to s. 39.3035, F.S., who has specialized training in sexual abuse, or permits a combination of such specialists, if deemed appropriate.

Confidentiality of Reports and Records (Section 4)

Except as otherwise provided in ch. 39, F.S., the DCF must keep confidential all records relating to any reports of child abuse, abandonment, or neglect, including any report made to the hotline and all records generated as a result of such report.⁸⁴ The DCF and any entity granted access to such records are exempt⁸⁵ from the public disclosure requirements in s. 119.07(1), F.S.⁸⁶

Section 39.202(2), F.S., provides that copies of reports and records, except for the reporter's name and other identifying information, may be disclosed, to the following entities or individuals if the following conditions are met:

⁷⁸ Section 39.2015(10), F.S.

⁷⁹ Section 39.2015(11), F.S.

⁸⁰ Section 39.2015(9), F.S.

⁸¹ The DCF, *Total Child Fatalities with a Critical Incident Rapid Response Team Response in 2021: 4*, available at <https://www.myflfamilies.com/childfatality/cirrtresults.shtml?minage=0&maxage=18&year=2021&cause=&prior12=&verified> (last visited March 1, 2021).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Section 39.202(1), F.S.

⁸⁵ When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991). Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

⁸⁶ *Id.*

- Employees, authorized agents, or contract providers of the DCF, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out certain functions;
- Criminal justice agencies of appropriate jurisdictions;
- The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred;
- The parent or legal custodian of any child and their attorneys, including any attorney representing a child in civil or criminal proceedings;
- Any person alleged to have caused the child's abuse, abandonment, or neglect; and
- Any appropriate official of the DCF or the Agency for Persons with Disabilities who is responsible for carrying out certain functions.

The DCF may not release the name or identifying information of a person who reports child abuse, abandonment, or neglect, except to employees of the specified agencies, without written consent of the person reporting.⁸⁷ The court, state attorney, or the DCF are permitted to subpoena the reporter when deemed necessary provided the fact that such person made the report is not disclosed.⁸⁸ Any person who reports child abuse or neglect may request at the time of the report to receive notice of the result of the protective investigation, and any person listed in s. 39.201(1), F.S., who makes a report in his or her official capacity may also request a written summary of the outcome of the investigation which shall be mailed to the reporter within 10 days after the investigation is completed.⁸⁹

Chapter 39, F.S., is silent on whether the Florida Legislature or their committee members may have access to the confidential reports and records. Section 11.143(2), F.S., however, provides that each committee has the right and authority to inspect and investigate, in part, the books, records, papers, documents, data, and operation of any public agency in Florida, including confidential information, to carry out its duty.

Effect of the Bill

The bill amends s. 39.202(2)(u), F.S., to include members of standing or select legislative committees as persons who are entitled to have access to the confidential reports and records, except for reporter name and identifying information unless permitted, to carry out their duties as provided for in s. 11.143(2), F.S. Access to the records must be granted within 7 business days upon request of the member.

Animal Cruelty and Child Abuse (Sections 6 and 13-17)

Recent studies suggest a link between animal⁹⁰ abuse and harm to other persons.⁹¹ Statistics support a connection between animal cruelty and violence against other humans:

⁸⁷ Section 39.202(5), F.S.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Section 828.27(1)(a), F.S., defines “animal” as any living dumb creature.

⁹¹ See Animal Legal Defense Fund, *The Link Between Cruelty to Animals and Violence Toward Humans*, available at <https://aldf.org/article/the-link-between-cruelty-to-animals-and-violence-toward-humans-2/> (hereinafter cited as “The ALDF Article”) (last visited March 1, 2021).

- Animal abusers are five times as likely to harm humans;⁹²
- Sixty percent of families under investigation for child abuse, and 88 percent for physical child abuse, reported animal cruelty;⁹³ and
- Children who abuse animals are 2-3 times more likely to have been abused themselves.⁹⁴

While some researchers disagree,⁹⁵ the National School Safety Council, the U.S. Department of Education, the American Psychological Association, and the National Crime Prevention Council agree that animal cruelty is a warning sign for at-risk youth. A number of studies have drawn links between the abuse of animals and violent incidents in schools.⁹⁶

Animal Control Ordinances

Government municipalities have the authority to enact ordinances relating to animal control or cruelty within certain specified restrictions or criteria that must be met.⁹⁷ If a person violates such duly enacted ordinance, a citation⁹⁸ may be issued by an officer,⁹⁹ including an animal control officer.

“Animal control officer” means any person employed or appointed by a county or municipality who is authorized to investigate, on public or private property, civil infractions relating to animal control or cruelty¹⁰⁰ and to issue citations.¹⁰¹ Animal control officers are required to complete a 40-hour minimum standards training course, which must cover specified topics, and 4 hours of post-certification every 2 years thereafter.¹⁰² Animal control officers are not currently required to receive training on child abuse, abandonment, or neglect.

⁹² The ALDF Article.

⁹³ The National Sheriffs’ Association, *Animal Cruelty and child Abuse*, available at <https://www.sheriffs.org/Animal-Cruelty-and-Child-Abuse> (last visited February 28, 2021).

⁹⁴ Lardeiri, A., U.S. News and World Report, *Juvenile Animal Abusers More Likely to Have Been Abused Themselves*, available at <https://www.usnews.com/news/national-news/articles/2018-07-16/juvenile-animal-abusers-more-likely-to-have-been-abused-themselves> (last visited February 28, 2021).

⁹⁵ Psychology Today, *Animal Cruelty Does Not Predict Who Will Be A School Shooter*, February 21, 2018, available at <https://www.psychologytoday.com/us/blog/animals-and-us/201802/animal-cruelty-does-not-predict-who-will-be-school-shooter> (last visited March 1, 2021).

⁹⁶ The Humane Society of the United States *Animal cruelty and human violence FAQ*, available at <https://www.humanesociety.org/resources/animal-cruelty-and-human-violence-faq> (last visited March 1, 2021).

⁹⁷ Section 828.27(2), F.S.

⁹⁸ Section 828.27(1)(f), F.S., defines “citation” as a written notice, issued to a person by an officer, that the officer has probable cause to believe that the person has committed a civil infraction in violation of a duly enacted ordinance and that the county court will hear the charge.

⁹⁹ Section 828.27(1)(e), F.S., defines “officer” as any law enforcement officer defined in s. 943.10, F.S., or any animal control officer. Section 943.10(1), F.S., defines “law enforcement officer” to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws.

¹⁰⁰ Section 828.27(1)(d), F.S., defines “cruelty” means any act of neglect, torture, or torment that causes unjustifiable pain or suffering of an animal.

¹⁰¹ Section 828.27(1)(b), F.S.

¹⁰² Section 828.27(4)(a), F.S.

Cross-Reporting

A study reported in 1983 found that there are parallels between the potential origins of violence to children and to animals.¹⁰³ In a sample of pet-owning child-abusers, 88 percent of the families where child abuse had occurred also abused the animals.¹⁰⁴ A six-year “gold standard” study conducted in 11 cities found that pet abuse is one of four predictors of domestic violence.¹⁰⁵ More than 50 percent of women entering domestic violence shelters reported that their partners abused or killed a family pet.¹⁰⁶

Several states have adopted cross-reporting laws that require officials investigating child abuse to report animal abuse and officials investigating animal abuse to report child abuse.¹⁰⁷ At least 28 states have counseling provisions in their laws relating to animal cruelty. Four of these states require a person convicted of animal cruelty to participate in psychological counseling and six of them mandate counseling for juveniles convicted of animal cruelty.¹⁰⁸

Florida law is silent on cross-reporting of known or suspected child abuse, abandonment, or neglect and instances of animal cruelty.

Sexual Activities Involving Animals

Approximately 46 states have criminal laws that prohibit sexual conduct with animals.¹⁰⁹ Hawaii, New Mexico, West Virginia, and Wyoming do not have state laws against sexual assault of animals.¹¹⁰ A study of incidents from 1975 to 2015 found that 31.6 percent of animal sex offenders also sexually offended adults and children.¹¹¹ Of these offenders, 52.9 percent had a

¹⁰³ DeViney, E., Dickert, J., & Lockwood, R (1983), *The Care of Pets within Child Abusing Families*, International Journal for the Study of Animal Problems, 4(4), 321-329, 328, available at https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1014&=&context=acwp_apaw&=&sei-redir=1&referer=https%253A%252F%252Fwww.bing.com%252Fsearch%253Fq%253DDeViney%252C%252BE.%252C%252BDickert%252C%252BJ.%252C%252B%252526%252BLockwood%252C%252BR%252B%25281983%2529%252B%2525E2%252580%25259CThe%252Bcare%252Bof%252Bpets%252Bwithin%252Bchild%252Babusing%252Bfamilies.%2525E2%252580%25259D%252BInternational%252BJournal%252Bfor%252Bthe%252BStudy%252Bof%252BAnimal%252BProblems%2526src%253DIE-SearchBox%2526FORM%253DIENAE2#search=%22DeViney%2C%20E.%2C%20Dickert%2C%20J.%2C%20%26%20Lockwood%2C%20R%20%281983%29%20%2525E2%252580%25259CThe%20care%20pets%20within%20child%20abusing%20families.%2525E2%252580%25259D%20International%20Journal%20Study%20Animal%20Problems%22 (last visited March 1, 2021).

¹⁰⁴ *Id.* at 327.

¹⁰⁵ The Humane Society of the United States, *Animal Cruelty and Human Violence FAQ*, available at <https://www.humanesociety.org/resources/animal-cruelty-and-human-violence-faq> (last visited March 1, 2021) (hereinafter cited as “Animal Cruelty and Human Violence”).

¹⁰⁶ *Id.*

¹⁰⁷ American Veterinary Medical Association, *Cross-reporting of Animal and Child Abuse*, April 2018, available at <https://www.avma.org/advocacy/state-local-issues/cross-reporting-animal-and-child-abuse> (last visited March 1, 2021).

¹⁰⁸ Animal Cruelty and Human Violence.

¹⁰⁹ Michigan State University, Animal Legal & Historical Center, *Table of State Animal Sexual Assault Laws*,

¹¹⁰ Animal Legal Defense Fund, *Laws Against the Sexual Assault of Animals*, available at <https://aldf.org/project/sexual-assault-of-animals/> (last visited March 1, 2021).

¹¹¹ The Journal of the American Academy of Psychiatry and the Law, *Arrest and Prosecution of Animal Sex Abuse (Bestiality) Offenders in the United States, 1975 – 2015*, May 2019, available at <http://jaapl.org/content/early/2019/05/16/JAAPL.003836-19> (last visited March 1, 2021).

prior conviction involving human sexual abuse, animal abuse, interpersonal violence, substances or property offenses.¹¹²

Section 828.126(2), F.S., provides that a person may not knowingly:

- Engage in any sexual conduct or sexual contact with an animal;
- Cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;
- Permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or
- Organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

“Sexual conduct” is defined as any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.¹¹³

“Sexual contact” is defined as any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.¹¹⁴

A person who violates s. 828.126(2), F.S., commits a first degree misdemeanor.¹¹⁵

Section 828.126, F.S., does not apply to accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices.¹¹⁶ Animal husbandry is not defined under s. 828.126, F.S.

¹¹² *Id.*

¹¹³ Section 828.126(1)(a), F.S.

¹¹⁴ Section 828.126(1)(b), F.S.

¹¹⁵ A first degree misdemeanor is punishable by up to one year in imprisonment or a \$1,000 fine as provided for in s. 775.082, F.S., or s. 775.083, F.S.

¹¹⁶ Section 828.126(4), F.S.

Sexual Performance by a Child

A person is also guilty of a second degree felony¹¹⁷ if he or she, knowing the character and content, promotes¹¹⁸ a sexual performance¹¹⁹ by a child, who is younger than 18 years old, and produces, directs, or promotes a performance¹²⁰ that includes any sexual conduct.¹²¹

“Sexual conduct” means the actual or simulated¹²² sexual intercourse, deviate sexual intercourse,¹²³ sexual bestiality, masturbation, or sadomasochistic abuse;¹²⁴ actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery¹²⁵ or simulates that sexual battery is being or will be committed.¹²⁶ “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.¹²⁷

A person who possesses with intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which includes any sexual conduct by a child is guilty of a second degree felony.¹²⁸ Possession of three or more copies of such materials is prima facie evidence of an intent to promote.¹²⁹

¹¹⁷ A second degree felony is punishable by up to 15 years in imprisonment or a \$10,000 fine as provided for in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

¹¹⁸ Section 827.071(1)(d), F.S., provides that “promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer to agree to do the same.

¹¹⁹ Section 827.071(1)(i), F.S., defines “sexual performance” as any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

¹²⁰ Section 827.071(1)(c), F.S., defines “performance” as any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

¹²¹ Section 827.071(3), F.S.

¹²² Section 827.071(1)(j), F.S., defines “simulated” as any performance or part thereof which includes sexual conduct by a child of less than 18 years old.

¹²³ Section 827.071(1)(a), F.S., defines “deviate sexual intercourse” as sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

¹²⁴ Section 827.071(1)(e), F.S., defines “sadomasochistic abuse” as flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

¹²⁵ Section 827.071(1)(h), F.S., defines “sexual battery” as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose.

¹²⁶ Section 827.071(1)(h), F.S. A mother’s breastfeeding of her baby does not under any circumstances constitute “sexual conduct.” *Id.*

¹²⁷ Section 827.071(1)(g), F.S.

¹²⁸ Section 827.071(4), F.S.

¹²⁹ *Id.*

Any person who knowingly possesses, controls, or intentionally views^{130, 131} a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation,¹³² which he or she knows to include any sexual conduct by a child commits a third degree felony.¹³³

These criminal provisions do not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation¹³⁴ and do not prohibit prosecution for such conduct under other laws of Florida, including laws with greater penalties.¹³⁵

Criminal Punishment Code

The Criminal Punishment Code (Code) is Florida's primary sentencing policy.¹³⁶ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹³⁷ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹³⁸ Absent mitigation,¹³⁹ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.

Except as otherwise provided by law, the statutory maximum sentence for an offense committed, which is classified as a:

- Capital felony is:
 - Death, if the proceeding held according to the procedure set forth in s. 921.141, F.S., results in a determination that it is appropriate for the person to be punished by death; or
 - Life imprisonment without the possibility of parole.
- Life felony is a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

¹³⁰ Each of these acts of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. Section 827.01(5)(a), F.S.

¹³¹ Section 827.071(1)(b) defines "intentionally view" as deliberately, purposefully, and voluntarily view. Proof of intentionally viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time. *Id.*

¹³² Each child engaging in sexual conduct in each of these mediums is a separate offense. Section 827.01(5)(a), F.S.

¹³³ Section 827.071(5)(a), F.S.

¹³⁴ Section 827.071(5)(b), F.S.

¹³⁵ Section 827.071(6), F.S.

¹³⁶ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹³⁷ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹³⁸ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹³⁹ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

- First degree felony is:
 - 30 years; or
 - Imprisonment for a term of years not exceeding life imprisonment when specifically provided by statute.
- Second degree felony is 15 years.
- Third degree felony is 5 years.¹⁴⁰

The promotion of a sexual performance by a child punishable under s. 827.071(3), F.S., is a level 6 offense. Possession with intent to promote materials which contain sexual conduct by a child punishable under s. 827.071(4), F.S., and materials possessed, controlled or intentionally viewed which contain a child engaging in sexual conduct punishable under s. 827.071(5), F.S., are level 5 offenses.¹⁴¹

Effect of the Bill

Cross-Reporting (Sections 6, 13, and 16)

The bill also provides legislative findings in the newly created s. 39.208, F.S., and in an unnumbered section of law that recognizes that animal cruelty is a type of interpersonal violence which frequently co-occurs with child abuse and other forms of family violence, and that early detection of animal cruelty provides:

- An important tool to safeguard children from abuse and neglect;
- Needed support to families; and
- Protection of animals.

The bill provides that the Legislature finds training of protective investigators and animal care and control personnel should include information on the link between the welfare of animals in the family and child safety and protection. The Legislature intends to require reporting and cross-reporting and collaborative training between these personnel.

The bill creates s. 39.208, F.S., establishing new cross-reporting requirements where child protective investigators are required to report known or suspected animal cruelty, and animal control officers are required to report known or suspected child abuse, abandonment, or neglect, of any child who is without parental or caregiver supervision.

Child protective investigators are required to report known or suspected incidents of animal cruelty within 72 hours to his or her supervisor for submission to a local animal control agency. The report must include:

- A description of the animal and animal cruelty;
- The name and address of the animal's owner or keeper, if available; and
- Any other available information that might assist in determining the cause of the animal cruelty and the manner in which it occurred.

A child protective investigator who makes a report is presumed to be acting in good faith and, if he or she cooperates in an investigation, is immune from civil or criminal liability or

¹⁴⁰ See s. 775.082, F.S.

¹⁴¹ Section 921.0022(3), F.S.

administrative penalty or sanction. A protective investigator who knowingly and willfully fails to report known or suspected animal cruelty as provided under a new s. 39.208, F.S., commits a second degree misdemeanor.¹⁴²

The bill also requires animal control officers to immediately report any known or suspected child abuse, abandonment, or neglect immediately. An animal control officer who knowingly and willfully fails to report known or suspected child abuse, abandonment, or neglect as provided under s. 39.208, F.S., is subject to the penalties imposed in s. 39.205, F.S.

The bill requires the DCF, in consultation with the Florida Animal Control Association (FACA), to develop or adapt existing training materials to provide a 1-hour training for all child protective investigators and animal control officers on child abuse, abandonment, or neglect or animal cruelty, and the interconnectedness of such abuse or neglect. The DCF must include in the training to child protective investigators information on how to identify harm to and neglect of animals, and the relationship of such activities to child welfare case practice. Training provided to animal control officers must advise them of the mandatory duty to report under ss. 39.208(3) and 39.201, F.S., and the criminal penalties for failing to report as provided for in s. 39.205, F.S.

Animal control officers are required to complete the 1-hour training course, and they must be given the opportunity to complete it during normal work hours.¹⁴³

The bill requires the DCF to adopt rules to implement this section.

The DCF reports that investigators have reported suspected incidents of animal abuse, neglect, or cruelty or abandonment of an animal to the local animal control officer.¹⁴⁴ It also reports that as of October 17, 2019, it did not have a training module developed in conjunction with the FACA which educates on child abuse and animal cruelty.¹⁴⁵

Sexual Activities Involving Animals (Sections 15 and 17)

The bill deletes the definition of “sexual conduct” under s. 828.126(1)(a), F.S. The definition is replaced with a definition of “animal husbandry” which includes the day-to-day care of, selective breeding of, and the raising of livestock that is commonly defined as domesticated animals or animals raised for agricultural purposes and that is located on land used for bona fide agricultural purposes as defined in s. 193.431(3)(b), F.S.

The definition of “sexual contact” under this section is amended to be the definition of “sexual contact with an animal” and means any act committed between a person and an animal for the purpose of sexual gratification, abuse, or financial gain which involves:

- Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;
- The fondling of the sex organ or anus of an animal; or

¹⁴² A second degree misdemeanor is punishable by up to 60 days imprisonment or \$500 fine under s. 775.082, F.S., or s. 775.083, F.S.

¹⁴³ Section 828.27(4)(a)2., F.S.

¹⁴⁴ The DCF SB 7000 (2020) Analysis at p. 3.

¹⁴⁵ *Id.*

- The insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.

The bill amends s. 828.126(2)(d), F.S., relating to an offense of sexual activities involving animals to read that a person may not “knowingly organize, promote, conduct, aid, abet, participate in as an observer, or advertise, offer, solicit or accept an offer of an animal for purposes of sexual contact with such animal, or perform any service in the furtherance of an act involving any sexual contact with an animal.” The words underlined have been added and the words “for a commercial or recreational purpose” have been deleted.

The bill also includes another act which gives rise to a criminal violation under s. 828.126, F.S., namely, to knowingly film, distribute, or possess pornographic images of a person and an animal engaged in any of the activities prohibited as described above.

In addition to these penalties, the bill provides that the court must issue an order prohibiting for up to five years from the date of conviction, regardless of whether adjudication is withheld, a person convicted of having sexual contact with an animal from:

- Harboring, owning, possessing, or exercising control over any animal;
- Residing in any household where animals are present; and
- Engaging in an occupation, whether paid or unpaid, or participating in a volunteer position at any establishment where animals are present.

The bill adds an exception to the criminal conduct for artificial insemination of an animal for reproductive purposes.

The bill reclassifies the offense from a first degree misdemeanor to a third degree felony. The bill amends s. 921.0022, F.S., making the offense of sexual activities involving animals a level 6 on the Offense Severity Ranking Chart.

Sexual Performance by a Child (Section 14)

The bill amends the definition of “sexual bestiality” to a definition of “sexual contact with an animal.” The definition of “sexual contact with an animal” is amended to have the same meaning as in s. 828.126, F.S., when an adult encourages or forces such act to be committed between a child and an animal. The reference to “sexual bestiality” under the definition of “sexual conduct” is amended to “sexual contact with an animal.”

Multidisciplinary Legal Representation (Section 9)

Multidisciplinary legal representation models (MLRM) have been adopted in states around the country, including The Vermont Parent Representation Center, the Center for Family Representation, the Bronx Defenders, and the Detroit Center for Family Advocacy.¹⁴⁶ While the

¹⁴⁶ The Children’s Bureau Express, *Collaborating to Build Multidisciplinary, Family-Centered, Strengths-Based Courts*, May 2020, available at <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=216&sectionid=17&articleid=5558> (last visited March 1, 2021) (hereinafter cited as “CBE Building Multidisciplinary Teams”).

- Requires services to be trauma-informed and pre-approved on the Health and Human Services website.¹⁵⁵

Effect of the Bill

The bill creates s. 39.4092, F.S., to provide each OCCCRC with permission to establish a MLRM program and follow program requirements for serving families in dependency cases. The bill provides the following legislative findings:

- MLRM is effective in reducing safety risks to children and providing families with better outcomes;
- Addressing challenges faced by parents, such as mental illness or substance abuse disorders, in a manner that achieves stability often falls within the core functions of the practice of social work;
- Social work professionals have a unique skill set, including client assessment and clinical knowledge, which allows them to interact and engage with clients in meaningful and unique ways, and can quickly connect families facing crises with the appropriate resources;
- Parent-peer specialists who assist parents with successfully navigating the child welfare system are a great benefit to the dependency system;
- Current federal provisions authorize the reimbursement of half the cost of attorneys for parents and children in eligible cases; and
- It is necessary to encourage and facilitate the use of MLRMs to improve outcomes and provide the best opportunities for families who are involved in the dependency system to be successful in creating safe and stable homes for their children.

The bill provides that the DCF must collaborate with the OCCCRC regional counsel to implement a MLRM program and provide funding with available matching federal funds to eligible families involved in the dependency system. The bill provides a MLRM program must, at minimum:

- Include a team that consists of a lawyer, a forensic social worker, and a parent-peer specialist, which is defined as a person who has:
 - Previously had his or her child removed and placed into out-of-home care;
 - Been successfully reunified with the child for more than two years; and
 - Received specialized training;
- Engage in cost-sharing agreements to maximize financial resources and enable access to federal funding;
- Provide specialized training for team members;
- Collect uniform data on each child whose parent is served by the program and ensure that reporting of data is conducted through the child's FSN identification number,¹⁵⁶ if applicable;

¹⁵⁵ The DCF, *Family First Prevention Services Act*, p. 26, August 28, 2020, available at http://centerforchildwelfare.fmhi.usf.edu/kb/prevplans/FFPSA-StatewideWebinar8_28_2020.pdf (last visited March 1, 2021).

¹⁵⁶ The FSN system is Florida's implementation of the Statewide and Tribal Automated Child Welfare Information Systems (SACWIS/TACWIS), which is a federally funded data collection system. All states were required to collect and report particular information to the federal government. States had the option of creating a SACWIS model in order to comply with these federal reporting requirements or they may implement an alternative data collection model. This information was then compiled into the Adoption and Foster Care Analysis and Reporting System and the National Child Abuse and Neglect Data System. Both systems are made publicly available on the Children's Bureau's Child Welfare Outcomes Report Data website.

- Develop consistent operational program policies and procedures throughout the region;
- Obtain agreements with universities relating to approved placements for social work students to ensure the placement of social workers in the program; and
- Execute conflict of interest agreements with each team member.

The bill requires each OCCCRC that establishes a MLRM program to provide an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA). The report must include data on all of the families served by the MLRM program and all of the following details:

- Reasons for the original involvement of the family in the dependency system.
- Length of time it takes to achieve a permanency goal for the children whose parents are served by the program.
- Frequency of each type of permanency goal achieved by the parents that are served by the program.
- Rate of re-abuse or re-removal of children whose parents are served by the program.
- Any other relevant factors that tend to show the impact that MLRM programs have on outcomes for children in the dependency system, provided each participating OCCCRC agrees to use uniform factors and data collection methods.

The bill provides that the first report must be submitted by October 1, 2022, and annually thereafter, to the OPPAGA, which must compile the results of such reports and compare the reported outcomes from the MLRM to known outcomes of children in the dependency system who are not served by the MLRM program. The OPPAGA must submit a report by December 1, 2022, and annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill authorizes the OCCCRC to adopt rules to administer this section.

Child Advocacy Centers (Section 8)

Child advocacy centers must meet specified criteria to become eligible for membership in the Florida Network of Children's Advocacy Centers, Inc. (FNCAC),¹⁵⁷ a statewide nonprofit membership organization.¹⁵⁸ In addition, child advocacy center staff must be trained and meet background screening requirements in accordance with s. 39.001(1), F.S.,¹⁵⁹ which the FNCAC is responsible for ensuring compliance.¹⁶⁰ State and federal funding of these centers is contingent on them meeting the eligibility criteria and the staff receiving the necessary training and screening. Florida law provides for how such funds will be distributed to the centers.¹⁶¹ Child advocacy centers submit annual reports to the FNCAC, which then compiles the reports and

See the National Conference of State Legislatures, *Child Welfare Information Systems*, June 25, 2020, available at <https://www.ncsl.org/research/human-services/child-welfare-information-systems.aspx> (last visited March 1, 2021).

¹⁵⁷ Section 39.3035(1), F.S.

¹⁵⁸ FNCAC, *About Us*, available at <https://www.fncac.org/about-us> (last visited March 1, 2021) (hereinafter cited as "FNCAC About Us").

¹⁵⁹ Employees must complete a level 2 background screening pursuant to ch. 435, F.S.

¹⁶⁰ Section 39.3035(2), F.S.

¹⁶¹ Section 39.3035(3)(a) and (b), F.S.

submits a final report to the President of the Senate and the Speaker of the House of Representatives in August of each year.¹⁶²

The FNCAC is an Accredited State Chapter of the National Children's Alliance and represents all local children's advocacy centers in Florida.¹⁶³ It reports that there are 27 children's advocacy centers that serve 85 percent of the children and families in Florida.¹⁶⁴ The map below illustrates the counties serviced by the centers.¹⁶⁵



Florida Children Advocacy Centers provide the following services, including, but not limited to:

- Forensic interviews;
- Crisis intervention and support services;
- Medical evaluations;
- Multidisciplinary review of cases;
- Evidenced-based prevention and intervention programs; and
- Professional training and community education.¹⁶⁶

In 2018, the Florida Children Advocacy Centers served over 34,000 children who were victims of child abuse and neglect and provided the following services:

¹⁶² Section 39.3035(3)(c), F.S.

¹⁶³ FNCAC, About Us.

¹⁶⁴ *Id.*

¹⁶⁵ FNCAC, *County Coverage Map*, available at <https://www.fncac.org/county-coverage-map> (last visited March 1, 2021).

¹⁶⁶ FNCAC, *What is a CAC*, available at <https://www.fncac.org/what-cac> (last visited March 1, 2021).

- 20,259 received therapy services;
- 17,297 received crisis intervention services;
- 11,120 medical evaluations; and
- 10,675 forensic/specialized interviews.¹⁶⁷

An analysis conducted by the National Children's Advocacy Center in Huntsville, Alabama in 2015 suggests that the children's advocacy center model saves approximately \$1,000 per case in services during the course of a child abuse investigation.¹⁶⁸

Effect of the Bill

The bill amends s. 39.3035, F.S., to clarify that the functions of child advocacy centers include facilities that offer multidisciplinary services in a community-based and child-focused environment to victims of child abuse or neglect. The bill also provides that children served by such centers may have experienced various types of abuse or neglect, such as sexual abuse or severe physical pain, and suggests that the centers bring together protective investigators, law enforcement, prosecutors, and medical and mental health professionals to provide a collaborated response to victims and their families.

Parenting Partnerships (Sections 10-12)

Section 409.1415, F.S., provides for parenting partnerships among caregivers and birth or legal parents when children are in out-of-home care to provide quality support and encourage reunification.¹⁶⁹ The DCF and community-based care lead agencies¹⁷⁰ (lead agencies) are required to support parenting partnerships when it is safe and in the child's best interest by taking specified steps to facilitate, develop plans, and support contact between caregivers and birth or legal parents.¹⁷¹ Section 409.1415(2)(b), F.S., requires the DCF, lead agencies, caregivers, and birth or legal parents to work cooperatively and comply with specified requirements including, in part:

- They must interact professionally with one another;
- They must develop a case plan together;
- Under s. 409.1415(2)(b)6., F.S., the DCF and lead agencies must provide a caregiver with the services and support they need; and
- Under s. 409.1415(2)(b)15., F.S., a caregiver must ensure that a child in his or her custody between 13 and 17 years old learns independent living skills.¹⁷²

¹⁶⁷ FNCAC, *Impact of Children's Advocacy Centers on Child Abuse and Neglect*, available at <https://www.fncac.org/impact-childrens-advocacy-centers-child-abuse-and-neglect> (last visited February 26, 2021).

¹⁶⁸ *Id.*

¹⁶⁹ Section 409.1415(1), F.S.

¹⁷⁰ The DCF operates a community-based care child welfare system that outsources foster care and related services to agencies with an increased local community ownership to enhance accountability, resource development, and system performance. The DCF contracts with community-based care lead agencies to provide direct or indirect child welfare services. The DCF, *Community-Based Care*, available at <https://www.myflfamilies.com/service-programs/community-based-care/overview.shtml> (last visited March 1, 2011).

¹⁷¹ Section 409.1415(2)(a), F.S.

¹⁷² Section 409.1415(2)(b), F.S.

The Foster Parent information Center (FPIC) helps individuals become foster parents.¹⁷³ The FPIC provides information, answers questions, and connects potential foster parents with local resources.¹⁷⁴ Any person who wishes to be a foster parent must meet specified conditions with which the FPIC will assist.¹⁷⁵

Foster Parent Support

Section 409.1453, F.S. requires the DCF in collaboration with the Florida Foster and Adoptive Parent Association (FAPA)¹⁷⁶ and the Quality Parenting Initiative (QPI)¹⁷⁷ to design training for caregivers on life skills necessary for youth in out-of-home care.

Section 409.1753, F.S., provides that the DCF must ensure that, within each district, each foster parent is provided with a telephone number to call during normal working hours when immediate assistance is required and the caseworker is unavailable. This number must be staffed by individuals who have the knowledge and authority necessary to assist foster parents.¹⁷⁸

Effect of the Bill

The bill amends s. 409.1415(2)(b)6., F.S., to specify that the services and support that must be provided to a caregiver are provided for in a new subsection created in s. 409.1415(3), F.S., which provides:

- The DCF must establish a Foster Parent Information Center to facilitate contact between former and current foster parents, known as foster parent advocates, to current and prospective foster parents to provide information and services, including but not limited to:
 - Assisting with the application and approval process, including timelines for each, preparing to transition a child into the home, and providing prospective foster parents with information with resources available in the community;
 - Accessing available resources and services, including those available from the Florida Foster and Adoptive Parent Association;
 - Providing information specific to a foster parent's individual needs; and

¹⁷³ The DCF, *Foster Care, How Do I Become a Foster Parent?*, available at <https://www.myflfamilies.com/service-programs/foster-care/how-do-i.shtml> (last visited March 1, 2021).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ The FAPA is a membership organization for foster, adoptive, and other caregivers in Florida. Its aim is, in part, to educate caregivers and parents, and promote a spirit of cooperation of all entities involved in the child welfare system. FAPA provides support and resources to caregivers to help develop healthy families. The DCF, *Foster Care*, available at <https://www.myflfamilies.com/service-programs/foster-care/support-fostering.shtml>. Florida FAPA, *About Florida FAPA*, available at <http://floridafapa.org/about-us/> (all sites last visited March 1, 2021).

¹⁷⁷ The QPI is a national movement for foster care change which focuses on creating a system that gives parents the tools to provide excellent parenting every day. The QPI system requires the support and involvement of birth families, relative caregivers, foster families, young people, and others in the child welfare system. It consists of a network of states, including Florida, as well as counties and private agencies that are committed to ensuring all children in care have excellent parenting and lasting relationships so they can thrive and grow. Florida implemented this program as a pilot in 2008. The QPI, *What is QPI*, January 2021, available at <https://www.qpi4kids.org/what-is-qpi/>; The QPI Florida, *No Place Like Home*, October 22, 2010, available at <http://centerforchildwelfare.fmhi.usf.edu/qpi1/docs/ReviewOfQPI2011.pdf>. The DCF, *Independent Living, The Quality Parenting Initiative, Frequently Asked Questions*, available at <https://www.myflfamilies.com/service-programs/independent-living/myfuturemychoice-fp-faqs.shtml> (all sites last visited March 1, 2021).

¹⁷⁸ Section 409.1753, F.S.

- Providing immediate assistance when necessary.¹⁷⁹
- The lead agencies must provide a caregiver with the resources and support that are available and discuss whether the caregiver meets any eligibility criteria. If the caregiver is unable to access resources, the lead agencies must assist the caregiver in initiating access to the following resources:
 - Providing referrals to kinship navigation services;
 - Assisting with linkages to community resources and completion of program applications;
 - Scheduling appointments, and
 - Initiating contact with community service providers.¹⁸⁰

Section 11 of the bill repeals s. 409.1453, F.S., that requires the DCF's to provide caregivers with life skills training, and relocates it to s. 409.1415(2)(b)15., F.S., with slightly modified language but substantially the same law.

Section 12 of the bill repeals Section 409.1753, F.S., that requires the DCF to provide foster parents with a telephone number for immediate assistance, and relocates it to this new subsection in s. 409.1415(3)(b)2., F.S.

Conforming Sections (Sections 19-22)

The bill amends ss. 39.301, 119.071, 322.09, and 934.03., F.S., conforming references to the changes made by this act.

The bill is effective October 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.

¹⁷⁹ Section 409.1415(3)(a), F.S.

¹⁸⁰ Section 409.1415(3)(b)1., F.S.

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

None.

B. Private Sector Impact:

The bill provides that an instructional personnel or school administrator who fails to comply with the mandatory reporting requirements of s. 39.201, F.S., under specified instances must have his or her certificate suspended. To the extent that this occurs, he or she may experience a loss of income due to his or her educator certificate being suspended for at least one year.¹⁸¹

The bill also adds a representative from a child advocacy center to the CIRRT. The representative should have special training in sexual abuse, or the CIRRT may include another specialist with similar training. This may result in a fiscal impact to the child advocacy centers.

C. Government Sector Impact:

The bill substantially expands the use of the critical incident rapid response team (CIRRT) process by requiring the DCF to deploy a CIRRT for every report of allegations of sexual abuse of a child if the child or another child in his or her family was the subject of a verified report of abuse or neglect in the previous 12 months. According to the DCF¹⁸², the department estimates that it will need 107 FTE positions (84 coordinators, 20 supervisors, and 3 managers) to conduct additional CIRRTs. The DCF projects that the revised criteria will require an estimated 4,033 additional investigations annually. This would also require a streamlining of the current CIRRT process within the department. The DCF anticipates the recurring cost for the additional staff to be \$10,826,283. Federal matching funds may be earned, but it is likely that the majority of the staff costs will need to be paid from the General Revenue Fund.

The bill also authorizes the OCCCRC to implement a multidisciplinary legal representation model program. The program will enable the DCF to draw federal Title IV-E funds on behalf of the OCCCRC and the JAC to conduct the program. Budget authority will be needed for DCF to “pass through” the federal reimbursement funding to these agencies¹⁸³. Additional trust fund budget authority may be requested in the Fiscal Year 2021-22 Legislative Budget, if the program is initiated in the OCCCRC or the JAC.

The bill requires the DCF to collaborate with FACA to develop training for child protective investigators and animal control officers. In a similar bill last year, the DCF

¹⁸¹ The Department of Education, *Agency Analysis for SB 7000 (2020)*, p. 4, October 29, 2019 (on file with the Senate Committee on Children, Families, and Elder Affairs). SB 7000 (2020) had a provision which resulted in the teaching certificate for an instructional teacher or administrator being suspended or revoked in certain instances.

¹⁸² The DCF, *Agency Analysis for SB 96*, p. 9, March 5, 2021 (on file with the Senate Appropriations Subcommittee on Health and Human Services).

¹⁸³ The DCF SB 96 Analysis at p. 4.

stated that the training would result in a one-time cost approximately \$35,000 to develop.¹⁸⁴

The bill increases the penalty for the offense of sexual activities involving animals to a third degree felony. The Criminal Justice Impact Conference with the Office of Economic and Demographic Research has not yet met to review the bill's impact on the state's prison population. To the extent that this results in additional persons being convicted and sentenced to prison, the bill will likely result in a positive insignificant prison bed impact (i.e. an increase of 10 or fewer beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.201, 39.2015, 39.202, 39.205, 39.301, 39.302, 39.3035, 119.071, 322.09, 409.1415, 827.071, 828.126, 828.27, 921.0022, 943.03, 1012.795, and 1012.796.

This bill creates the following sections of the Florida Statutes: 39.101, 39.208, and 39.4092.

This bill repeals the following sections of the Florida Statutes: 409.1453 and 409.1753.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Children, Families, and Elder Affairs on March 2, 2021:

The committee substitute makes a technical change to the effective date.

B. Amendments:

None.

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

¹⁸⁴ The DCF SB7000 (2020) Analysis at p. 7–8.



335142

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Book) recommended the following:

Senate Amendment

Delete lines 526 - 528
and insert:
child or another child in his or her family was the subject of a
verified report of suspected abuse or neglect during the
previous 12 months which resulted in the child being placed in
out-of-home care or under protective supervision with the
department. Only one team shall be deployed for an allegation of
sexual abuse that is based on the same act, criminal episode, or
transaction regardless of the number of reports that are



335142

12 received by the department. This includes any alleged incident
13 involving



526162

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Book) recommended the following:

Senate Substitute for Amendment (335142) (with title amendment)

Delete lines 508 - 547

and insert:

Section 3. Present subsections (3) through (11) of section 39.2015, Florida Statutes, are redesignated as subsections (4) through (12), respectively, a new subsection (3) is added to that section, and subsection (1) and present subsections (3) and (4) of that section are amended, to read:

39.2015 Critical incident rapid response team.—



526162

(1) As part of the department's quality assurance program, the department shall provide an immediate multiagency investigation of certain child deaths or other serious incidents, including, but not limited to, allegations of sexual abuse of a child as described in this chapter. The purpose of such investigation is to identify root causes and rapidly determine the need to change policies and practices related to child protection and child welfare.

(3) An immediate onsite investigation conducted by a critical incident rapid response team is required for all reports received by the department containing allegations of sexual abuse of a child as described in this chapter who is currently placed in out-of-home care if the child was the subject of a verified report of suspected abuse or neglect during the previous 6 months. Only one team shall be deployed for an allegation of sexual abuse that is based on the same act, criminal episode, or transaction regardless of the number of reports that are received by the department.

(4)-(3) Each investigation shall be conducted by a multiagency team of at least five professionals with expertise in child protection, child welfare, and organizational management. The team may consist of employees of the department, community-based care lead agencies, Children's Medical Services, and community-based care provider organizations; faculty from the institute consisting of public and private universities offering degrees in social work established pursuant to s. 1004.615; or any other person with the required expertise. The team shall include, at a minimum, a Child Protection Team medical director, a representative from a child advocacy center



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pursuant to s. 39.3035 who has specialized training in sexual abuse, or a combination of such specialists if deemed appropriate. With respect to investigations conducted under this section related to allegations of child sexual abuse, the Child Protection Team medical director may designate a member of the Child Protection Team to participate in the investigation as his or her designee. The majority of the team must reside in judicial circuits outside the location of the incident. The secretary shall appoint a team leader for each group assigned to an investigation. Notwithstanding subsections (2) and (3), at the discretion of the team leader, the team or select team members may conduct all or part of the investigation remotely.

(5)~~(4)~~ An investigation shall be initiated as soon as possible, but not later than 2 business days after the case is reported to the department. A preliminary report on each case shall be provided to the secretary no later than 30 days after the investigation begins for the investigation of a child death, and 45 days for the investigation of an allegation of child sexual abuse.

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

And the title is amended as follows:

Delete line 27

and insert:

membership of multiagency teams; authorizing in certain circumstances for the investigation to be conducted remotely; specifying the time in which a report must be provided to the secretary; amending s. 39.202,

By the Committee on Children, Families, and Elder Affairs; and
Senator Book

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1 A bill to be entitled
2 An act relating to child welfare; creating s. 39.101,
3 F.S.; transferring existing provisions relating to the
4 central abuse hotline of the Department of Children
5 and Families; providing additional requirements
6 relating to the hotline; revising requirements for
7 certain statistical reports that the department is
8 required to collect and analyze; amending s. 39.201,
9 F.S.; revising when a person is required to report to
10 the central abuse hotline; requiring animal control
11 officers and certain agents to provide their names to
12 hotline staff; requiring central abuse hotline
13 counselors to advise reporters of certain information;
14 requiring counselors to receive specified periodic
15 training; revising requirements relating to reports of
16 abuse involving impregnation of children; providing
17 requirements for the department when handling reports
18 of child abuse, neglect, or abandonment by a parent or
19 caregiver and reports of child-on-child sexual abuse;
20 amending s. 39.2015, F.S.; specifying serious
21 incidents for which the department is required to
22 provide an immediate multiagency investigation;
23 requiring an immediate onsite investigation by a
24 critical incident rapid response team when reports are
25 received by the department containing allegations of
26 the sexual abuse of certain children; revising
27 membership of multiagency teams; amending s. 39.202,
28 F.S.; expanding the authorization of access to certain
29 confidential records to include members of standing or

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

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30 select legislative committees, upon request, within a
31 specified timeframe; amending s. 39.205, F.S.;
32 providing construction; specifying that certain
33 persons are not relieved from the duty to report by
34 notifying a supervisor; creating s. 39.208, F.S.;
35 providing legislative findings and intent; providing
36 responsibilities for child protective investigators
37 relating to animal cruelty; providing criminal, civil,
38 and administrative immunity to child protective
39 investigators who report known or suspected animal
40 cruelty; providing responsibilities for animal control
41 officers relating to child abuse, abandonment, and
42 neglect; providing criminal penalties; requiring the
43 department to develop training in consultation with
44 the Florida Animal Control Association which relates
45 to child and animal cruelty; providing requirements
46 for such training; requiring the department to adopt
47 rules; amending s. 39.302, F.S.; conforming cross-
48 references; authorizing certain persons to be
49 represented by an attorney or accompanied by another
50 person under certain circumstances during
51 institutional investigations; providing requirements
52 relating to institutional investigations; amending s.
53 39.3035, F.S.; providing a description of child
54 advocacy centers; creating s. 39.4092, F.S.; providing
55 legislative findings; authorizing offices of criminal
56 conflict and civil regional counsel to establish a
57 multidisciplinary legal representation model program
58 to serve parents of children in the dependency system;

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59 requiring the department to collaborate with the
 60 office to implement a program and provide funding;
 61 specifying program requirements; defining the term
 62 "parent-peer specialist"; requiring each region that
 63 establishes a multidisciplinary legal representation
 64 model program to submit an annual report by a certain
 65 date to the Office of Program Policy Analysis and
 66 Government Accountability; requiring the office to
 67 compile the reports and include such information in a
 68 specified report sent to the Governor and the
 69 Legislature by a specified date; authorizing the
 70 office of criminal conflict and civil regional counsel
 71 to adopt rules; amending s. 409.1415, F.S.; requiring
 72 the department to make available specified training
 73 for caregivers on the life skills necessary for
 74 children in out-of-home care; requiring the department
 75 to establish the Foster Information Center for
 76 specified purposes; requiring community-based care
 77 lead agencies to provide certain information and
 78 resources to kinship caregivers and to provide
 79 specified assistance to such caregivers; requiring
 80 lead agencies to provide caregivers with a certain
 81 telephone number; repealing s. 409.1453, F.S.,
 82 relating to the design and dissemination of training
 83 for foster care caregivers; repealing s. 409.1753,
 84 F.S.; relating to duties of the department relating to
 85 foster care; providing legislative intent; amending s.
 86 827.071, F.S.; renaming the term "sexual bestiality"
 87 as "sexual contact with an animal" and redefining the

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88 term; amending s. 828.126, F.S.; revising and defining
 89 terms; revising prohibitions relating to sexual
 90 conduct and sexual contact with an animal; revising
 91 criminal penalties; requiring a court to issue certain
 92 orders; revising applicability; amending s. 828.27,
 93 F.S.; requiring county and municipal animal control
 94 officers to complete specified training; requiring
 95 that animal control officers be provided with
 96 opportunities to attend such training during normal
 97 work hours; amending s. 921.0022, F.S.; assigning an
 98 offense severity ranking for sexual activities
 99 involving animals; amending s. 1012.795, F.S.;
 100 requiring the Education Practices Commission to
 101 suspend the educator certificate of instructional
 102 personnel and school administrators for failing to
 103 report known or suspected child abuse under certain
 104 circumstances; amending ss. 39.301, 119.071, 322.09,
 105 and 934.03, F.S.; conforming cross-references;
 106 providing an effective date.

107
 108 Be It Enacted by the Legislature of the State of Florida:

109
 110 Section 1. Section 39.101, Florida Statutes, is created to
 111 read:

112 39.101 Central abuse hotline.—The central abuse hotline is
 113 the first step in the safety assessment and investigation
 114 process.

115 (1) ESTABLISHMENT AND OPERATION.—

116 (a) The department shall operate and maintain a central

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117 abuse hotline capable of receiving all reports of known or
 118 suspected child abuse, abandonment, or neglect and reports that
 119 a child is in need of supervision and care and has no parent,
 120 legal custodian, or responsible adult relative immediately known
 121 and available to provide supervision and care. The hotline must
 122 accept reports 24 hours a day, 7 days a week, and such reports
 123 must be made in accordance with s. 39.201. The central abuse
 124 hotline must be capable of accepting reports made in accordance
 125 with s. 39.201 in writing, through a single statewide toll-free
 126 telephone number, or through electronic reporting. Any person
 127 may use any of these methods to make a report to the central
 128 abuse hotline.

129 (b) The central abuse hotline must be operated in such a
 130 manner as to enable the department to:

131 1. Accept reports for investigation when there is a
 132 reasonable cause to suspect that a child has been or is being
 133 abused or neglected or has been abandoned.

134 2. Determine whether the allegations made by the reporter
 135 require an immediate or a 24-hour response priority in
 136 accordance with subsection (2).

137 3. Immediately identify and locate prior reports or cases
 138 of child abuse, abandonment, or neglect through the use of the
 139 department's automated tracking system.

140 4. Track critical steps in the investigative process to
 141 ensure compliance with all requirements for any report of abuse,
 142 abandonment, or neglect.

143 5. When appropriate, refer calls that do not allege the
 144 abuse, neglect, or abandonment of a child to other organizations
 145 that may better resolve the reporter's concerns.

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146 6. Serve as a resource for the evaluation, management, and
 147 planning of preventive and remedial services for children who
 148 have been subjected to abuse, abandonment, or neglect.

149 7. Initiate and enter into agreements with other states for
 150 the purposes of gathering and sharing information contained in
 151 reports on child maltreatment to further enhance programs for
 152 the protection of children.

153 8. Promote public awareness of the central abuse hotline
 154 through community-based partner organizations and public service
 155 campaigns.

156 (2) TIMELINES FOR INITIATING INVESTIGATION.—Upon receiving
 157 a report to the central abuse hotline, the department must
 158 determine the timeframe in which to initiate an investigation
 159 pursuant to chapter 39. An investigation must be commenced:

160 (a) Immediately, regardless of the time of day or night, if
 161 it appears that:

162 1. The immediate safety or well-being of a child is
 163 endangered;

164 2. The family may flee or the child may be unavailable for
 165 purposes of conducting a child protective investigation; or

166 3. The facts reported to the central abuse hotline
 167 otherwise so warrant.

168 (b) Within 24 hours after receipt of a report that does not
 169 involve the criteria specified in paragraph (a).

170 (3) COLLECTION OF INFORMATION AND DATA.—The department
 171 shall:

172 (a)1. Voice-record all incoming or outgoing calls that are
 173 received or placed by the central abuse hotline which relate to
 174 suspected or known child abuse, neglect, or abandonment and

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maintain an electronic copy of each report made to the hotline, whether through a call or the electronic system.

2. Make the recording or electronic copy of the report made to the central abuse hotline a part of the record. Notwithstanding s. 39.202, the recording must be released in full only to law enforcement agencies and state attorneys for the purposes of investigating and prosecuting criminal charges pursuant to s. 39.205, or to employees of the department for the purposes of investigating and seeking administrative penalties pursuant to s. 39.206.

This paragraph does not prohibit hotline staff from using the recordings or the electronic reports for quality assurance or training purposes.

(b)1. Secure and install electronic equipment that automatically provides to the hotline the number from which the call or fax is placed or the Internet protocol address from which the report is received.

2. Enter the number or Internet protocol address into the report of abuse, abandonment, or neglect for it to become a part of the record of the report.

3. Maintain the confidentiality of such information in the same manner as given to the identity of the reporter pursuant to s. 39.202.

(c)1. Update the web form used for reporting child abuse, abandonment, or neglect to include qualifying questions in order to obtain necessary information required to assess need and the timelines necessary for initiating an investigation under subsection (2).

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2. Make the report available in its entirety to the counselors as needed to update the Florida Safe Families Network or other similar systems.

(d) Monitor and evaluate the effectiveness of the reporting and investigating of suspected child abuse, abandonment, or neglect through the development and analysis of statistical and other information.

(e) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, abandonment, and neglect.

(f)1. Collect and analyze child-on-child sexual abuse reports and include such information in the aggregate statistical reports.

2. Collect and analyze, in separate statistical reports, those reports of child abuse and sexual abuse which are reported from or which occurred:

a. On school premises;

b. On school transportation;

c. At school-sponsored off-campus events;

d. At any school readiness program provider determined to be eligible under s. 1002.88;

e. At a private prekindergarten provider or a public school prekindergarten provider, as those terms are defined in s. 1002.51;

f. At a public K-12 school as described in s. 1000.04;

g. At a private school as defined in s. 1002.01;

h. At a Florida College System institution or a state university, as those terms are defined in s. 1000.21; or

i. At any school, as defined in s. 1005.02.

(4) USE OF INFORMATION RECEIVED BY HOTLINE.-

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(a) Information received by the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) or (h) or s. 402.302(15).

(b) Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

(c) Information in the central abuse hotline also may be used by the Department of Education for purposes of educator certification discipline and review pursuant to s. 39.202(2)(g).

(5) QUALITY ASSURANCE.—On an ongoing basis, the department's quality assurance program shall review screened-out reports involving three or more unaccepted reports on a single child, when jurisdiction applies, in order to detect such things as harassment and situations that warrant an investigation because of the frequency of the reports or the variety of the sources of the reports. A component of the quality assurance program must analyze unaccepted reports to the hotline by identified relatives as a part of the review of screened-out calls. The Assistant Secretary for Child Welfare may refer a case for investigation when it is determined, as a result of such review, that an investigation may be warranted.

Section 2. Section 39.201, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 39.201, F.S., for present text.)

39.201 Required reports of child abuse, abandonment,

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neglect, and juvenile sexual abuse; required reports of death; reports involving a child who has exhibited inappropriate sexual behavior.—

(1) REQUIRED REPORTING.—

(a)1. A person is required to report immediately to the central abuse hotline established in s. 39.101, by a call to the toll-free number or by electronic report, if he or she knows, or has reasonable cause to suspect, that any of the following has occurred:

a. Child abuse, neglect, or abandonment by a parent or caregiver, which includes, but is not limited to, when a child is abused, neglected, or abandoned by a parent, legal custodian, caregiver, or other person responsible for the child's welfare or when a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

b. Child abuse by a noncaregiver, which includes, but is not limited to, when a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare. Such reports must be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

2. Any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or of juvenile sexual abuse shall report such knowledge or suspicion to the department. This includes any alleged incident involving a child who is in the custody of or under the protective supervision of the department.

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Such reports may be made on the single statewide toll-free telephone number or by fax, web-based chat, or web-based report.

(b)1. A person from the general public may make a report to the central abuse hotline anonymously if he or she chooses to do so.

2. A person making a report to the central abuse hotline under this section who is part of any of the following occupational categories is required to provide his or her name to the central abuse hotline staff:

a. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;

b. Health professional or mental health professional other than a category listed in sub-subparagraph a.;

c. Practitioner who relies solely on spiritual means for healing;

d. School teacher or other school official or personnel;

e. Social worker, day care center worker, or other professional child care worker, foster care worker, residential worker, or institutional worker;

f. Law enforcement officer;

g. Judge; or

h. Animal control officer as defined in s. 828.27 or agent appointed under s. 828.03.

(c) Central abuse hotline counselors shall advise persons who are making a report to the central abuse hotline that, while their names must be entered into the record of the report, the names of reporters are held confidential and exempt as provided in s. 39.202. Counselors must receive periodic training in

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encouraging all reporters to provide their names when making a report.

(2) EXCEPTIONS TO REPORTING.—

(a) An additional report of child abuse, abandonment, or neglect does not have to be made by:

1. A professional who is hired by or who enters into a contract with the department for the purpose of treating or counseling any person as a result of a report of child abuse, abandonment, or neglect if such person was the subject of the referral for treatment.

2. An officer or employee of the judicial branch when the child is currently being investigated by the department, when there is an existing dependency case, or when the matter has previously been reported to the department, if there is reasonable cause to believe that the information is already known to the department. This subparagraph applies only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.

3. An officer or employee of a law enforcement agency when the incident under investigation by the law enforcement agency was reported to law enforcement by the central abuse hotline through the electronic transfer of the report or call. The department's central abuse hotline is not required to electronically transfer calls and reports received pursuant to paragraph (1)(b) to the county sheriff's office if the matter was initially reported to the department by the county sheriff's office or by another law enforcement agency. This subparagraph applies only when the information related to the alleged child abuse has been provided to the officer or employee of a law

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enforcement agency or central abuse hotline employee in the course of carrying out his or her official duties.

(b) Nothing in this chapter or in the contract with community-based care providers for foster care and related services as specified in s. 409.987 may be construed to remove or reduce the duty and responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

(3) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.-

(a) Abuse occurring out of state.-

1. Except as provided in subparagraph 2., the central abuse hotline is prohibited from taking a report of known or suspected child abuse, abandonment, or neglect when the report is related to abuse, abandonment, or neglect that occurred out of state and the alleged perpetrator and the child alleged to be a victim do not live in this state.

2. If the child is currently being evaluated in a medical facility in this state, the central abuse hotline must accept the report or call for investigation and must transfer the information on the report or call to the appropriate state or country.

3. If the child is not currently being evaluated in a medical facility in this state, the central abuse hotline must transfer the information on the report or call to the appropriate state or county.

(b) Abuse reports received from emergency room physicians.-

The department must initiate an investigation when it receives a

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report from an emergency room physician.

(c) Abuse involving impregnation of a child.-A report must be immediately electronically transferred to the appropriate county sheriff's office or other appropriate law enforcement agency by the central abuse hotline if the report is of an instance of known or suspected child abuse involving impregnation of a child younger than 16 years of age by a person 21 years of age or older solely under s. 827.04(3). If the report is of known or suspected child abuse solely under s. 827.04(3), the reporting provisions of subsection (1) do not apply to health care professionals or other persons who provide medical or counseling services to pregnant children when such reporting would interfere with the provision of medical services.

(d) Institutional child abuse or neglect.-Reports involving known or suspected institutional child abuse or neglect, as defined in s. 39.01, must be made and received in the same manner as all other reports made pursuant to this section.

(e) Surrendered newborn infants.-

1. The department must receive reports involving surrendered newborn infants as described in s. 383.50.

2.a. A report may not be considered a report of abuse, neglect, or abandonment solely because the infant has been left at a hospital, emergency medical services station, or fire station pursuant to s. 383.50.

b. If the report involving a surrendered newborn infant does not include indications of abuse, neglect, or abandonment other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire

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station, the department must provide to the caller making the report the name of a licensed child-placing agency on a rotating basis from a list of licensed child-placing agencies eligible and required to accept physical custody of and to place surrendered newborn infants.

3. If the report includes indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report must be considered as a report of abuse, neglect, or abandonment and, notwithstanding chapter 383, is subject to the requirements of s. 39.395 and all other relevant provisions of this chapter.

(4) REPORTS OF CHILD ABUSE, NEGLECT, OR ABANDONMENT BY A PARENT OR CAREGIVER.—

(a)1. Upon receiving a report made to the department's central abuse hotline, personnel of the department shall determine if the received report meets the statutory definition of child abuse, abandonment, or neglect.

2. Any report meeting one of these definitions must be accepted for protective investigation pursuant to part III of this chapter.

(b)1. Any call received from a parent or legal custodian seeking assistance for himself or herself which does not meet the criteria for being a report of child abuse, abandonment, or neglect may be accepted by the hotline for response to ameliorate a potential future risk of harm to a child.

2. The department must refer the parent or legal custodian for appropriate voluntary community services if it is determined by personnel of the department that a need for community

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services exists.

(5) REPORTS OF SEXUAL ABUSE OF A CHILD, JUVENILE SEXUAL ABUSE, OR A CHILD WHO HAS EXHIBITED INAPPROPRIATE SEXUAL BEHAVIOR.—

(a) Reports involving sexual abuse of a child or juvenile sexual abuse shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or by fax, web-based chat, or web-based report. This includes any alleged incident involving a child who is in the custody of or under the protective supervision of the department.

(b)1. Within 48 hours after receiving a report required under subparagraph (1)(a)2. made to the department's central abuse hotline, personnel of the department shall conduct an assessment, assist the family in receiving appropriate services pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office.

2. Reports involving a child who has exhibited inappropriate sexual behavior must be made and received by the department. The central abuse hotline shall immediately electronically transfer the report or call to the county sheriff's office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307 and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

(c) The services identified in the assessment should be provided in the least restrictive environment possible and must include, but need not be limited to, child advocacy center

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services pursuant to s. 39.3035 and sexual abuse treatment programs developed and coordinated by the Children's Medical Services Program in the Department of Health pursuant to s. 39.303.

(d) The department shall ensure that the facts and results of any investigation of such abuse involving a child in the custody of, or under the protective supervision of, the department are made known to the court at the next hearing and are included in the next report to the court concerning the child.

(e)1. In addition to conducting an assessment and assisting the family in receiving appropriate services, the department shall conduct a child protective investigation under subparagraph (1)(a)2. which occurs on school premises; on school transportation; at school-sponsored off-campus events; at a public or private school readiness or prekindergarten program; at a public K-12 school; or at a private school. The protective investigation must include an interview with the child's parent or legal guardian.

2. Further, the department shall notify the Department of Education; the law enforcement agency having jurisdiction over the municipality or county in which the school is located; and, as appropriate, the superintendent of the school district where the school is located, the administrative officer of the private school, or the owner of the private school readiness or prekindergarten provider.

3. The department shall make a full written report to the law enforcement agency within 3 working days after making the oral report. Whenever possible, any criminal investigation must

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be coordinated with the department's child protective investigation. Any interested person who has information regarding such abuse may forward a statement to the department.

(6) MANDATORY REPORTS OF A CHILD DEATH.—Any person required to report or investigate cases of suspected child abuse, abandonment, or neglect who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect shall report his or her suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his or her findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 39.202.

Section 3. Present subsections (3) through (11) of section 39.2015, Florida Statutes, are redesignated as subsections (4) through (12), respectively, a new subsection (3) is added to that section, and subsection (1) and present subsection (3) of that section are amended, to read:

39.2015 Critical incident rapid response team.—

(1) As part of the department's quality assurance program, the department shall provide an immediate multiagency investigation of certain child deaths or other serious incidents, including, but not limited to, allegations of sexual abuse of a child as described in this chapter. The purpose of such investigation is to identify root causes and rapidly determine the need to change policies and practices related to child protection and child welfare.

(3) An immediate onsite investigation conducted by a

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critical incident rapid response team is required for all reports received by the department containing allegations of sexual abuse of a child as described in this chapter if the child or another child in his or her family was the subject of a verified report of suspected abuse or neglect during the previous 12 months. This includes any alleged incident involving a child who is in the custody of or under the protective supervision of the department.

~~(4)~~ (3) Each investigation shall be conducted by a multiagency team of at least five professionals with expertise in child protection, child welfare, and organizational management. The team may consist of employees of the department, community-based care lead agencies, Children's Medical Services, and community-based care provider organizations; faculty from the institute consisting of public and private universities offering degrees in social work established pursuant to s. 1004.615; or any other person with the required expertise. The team shall include, at a minimum, a Child Protection Team medical director, a representative from a child advocacy center pursuant to s. 39.3035 who has specialized training in sexual abuse, or a combination of such specialists if deemed appropriate. The majority of the team must reside in judicial circuits outside the location of the incident. The secretary shall appoint a team leader for each group assigned to an investigation.

Section 4. Paragraph (t) of subsection (2) of section 39.202, Florida Statutes, is amended, and paragraph (u) is added to that subsection, to read:

39.202 Confidentiality of reports and records in cases of

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child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of, or other identifying information with respect to, the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(t) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed child-caring agency as defined in s. 39.01 ~~s. 39.01(41)~~, an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

(u) Members of standing or select legislative committees, as provided under s. 11.143(2), within 7 business days, upon request of the member.

Section 5. Subsections (1), (3), and (4) of section 39.205, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.—

(1) A person ~~who is required to report known or suspected child abuse, abandonment, or neglect and~~ who knowingly and willfully fails to report known or suspected child abuse, abandonment, or neglect ~~do so~~, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083,

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or s. 775.084. A judge subject to discipline pursuant to s. 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.

(3) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02, whose administrators ~~knowingly and willfully~~, upon receiving information from faculty, staff, or other institution employees, knowingly and willfully fail to report to the central abuse hotline pursuant to this chapter known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, or who knowingly and willfully prevent another person from doing so, shall be subject to fines of \$1 million for each such failure.

(a) A Florida College System institution subject to a fine shall be assessed by the State Board of Education.

(b) A state university subject to a fine shall be assessed by the Board of Governors.

(c) A nonpublic college, university, or school subject to a fine shall be assessed by the Commission for Independent Education.

(4) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02, whose law enforcement agency fails to report to the central abuse hotline pursuant to this chapter known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or

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school, or during an event or function sponsored by the university, college, or school, shall be subject to fines of \$1 million for each such failure, assessed in the same manner as specified in subsection (3).

(11) This section may not be construed to remove or reduce the requirement of any person, including any employee of a school readiness program provider determined to be eligible under s. 1002.88; a private prekindergarten provider or a public school prekindergarten provider, as those terms are defined in s. 1002.51; a public K-12 school as described in s. 1000.04; a home education program or a private school, as those terms are defined in s. 1002.01; a Florida College System institution or a state university, as those terms are defined in s. 1000.21; a college as defined in s. 1005.02; or a school as defined in s. 1005.02, to directly report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline pursuant to this chapter. A person required to report to the central abuse hotline is not relieved of the obligation by notifying his or her supervisor.

Section 6. Section 39.208, Florida Statutes, is created to read:

39.208 Cross-reporting child abuse, abandonment, or neglect and animal cruelty.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature recognizes that animal cruelty of any kind is a type of interpersonal violence that often co-occurs with child abuse and other forms of family violence, including elder abuse and domestic violence. Early identification of animal cruelty is an important tool in safeguarding children

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639 from abuse and neglect, providing needed support to families,
 640 and protecting animals.

641 (b) The Legislature finds that education and training for
 642 child protective investigators and animal care and control
 643 personnel should include information on the link between the
 644 welfare of animals in the family and child safety and
 645 protection.

646 (c) Therefore, it is the intent of the Legislature to
 647 require reporting and cross-reporting protocols and
 648 collaborative training between child protective services and
 649 animal control services personnel to help protect the safety and
 650 well-being of children, their families, and their animals.

651 (2) RESPONSIBILITIES OF CHILD PROTECTIVE INVESTIGATORS.—

652 (a) Any person who is required to investigate child abuse,
 653 abandonment, or neglect under this chapter and who, while acting
 654 in his or her professional capacity or within the scope of
 655 employment, knows or has reasonable cause to suspect that animal
 656 cruelty has occurred at the same address shall report such
 657 knowledge or suspicion within 72 hours to his or her supervisor
 658 for submission to a local animal control agency. The report must
 659 include all of the following information:

660 1. A description of the animal and of the known or
 661 suspected animal cruelty.

662 2. The name and address of the animal's owner or keeper, if
 663 that information is available to the child protective
 664 investigator.

665 3. Any other information available to the child protective
 666 investigator which might assist an animal control officer or law
 667 enforcement officer in establishing the cause of the animal

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668 cruelty and the manner in which it occurred.

669 (b) A child protective investigator who makes a report
 670 under this section is presumed to have acted in good faith. An
 671 investigator acting in good faith who makes a report under this
 672 section or who cooperates in an investigation of suspected
 673 animal cruelty is immune from any civil or criminal liability or
 674 administrative penalty or sanction that might otherwise be
 675 incurred in connection with making the report or otherwise
 676 cooperating.

677 (3) RESPONSIBILITIES OF ANIMAL CONTROL OFFICERS.—Any person
 678 who is required to investigate animal cruelty under chapter 828
 679 and who, while acting in his or her professional capacity or
 680 within the scope of employment, knows or has reasonable cause to
 681 suspect that a child is abused, abandoned, or neglected by a
 682 parent, legal custodian, caregiver, or other person responsible
 683 for the child's welfare or that a child is in need of
 684 supervision and care and does not have a parent, a legal
 685 custodian, or a responsible adult relative immediately known and
 686 available to provide supervision and care to that child shall
 687 immediately report such knowledge or suspicion to the
 688 department's central abuse hotline.

689 (4) PENALTIES.—

690 (a) A child protective investigator who is required to
 691 report known or suspected animal cruelty under subsection (2)
 692 and who knowingly and willfully fails to do so commits a
 693 misdemeanor of the second degree, punishable as provided in s.
 694 775.082 or s. 775.083.

695 (b) An animal control officer who observes, in the course
 696 of his or her duties, known or suspected abuse, neglect, or

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abandonment of a child, who is required to report known or suspected abuse, neglect, or abandonment of a child under subsection (3), and who knowingly and willfully fails to report an incident of known or suspected abuse, abandonment, or neglect, as required by s. 39.201, is subject to the penalties imposed in s. 39.205.

(5) TRAINING.—The department, in consultation with the Florida Animal Control Association, shall develop or adapt and use already available training materials in a 1-hour training for all child protective investigators and animal control officers on the accurate and timely identification and reporting of child abuse, abandonment, or neglect or animal cruelty and the interconnectedness of such abuse and neglect. The department shall incorporate into the required training for child protective investigators information on the identification of harm to and neglect of animals and the relationship of such activities to child welfare case practice. The 1-hour training developed for animal control officers must include a component that advises such officers of the mandatory duty to report any known or suspected child abuse, abandonment, or neglect under this section and s. 39.201 and the criminal penalties associated with a violation of failing to report known or suspected child abuse, abandonment, or neglect which is punishable in accordance with s. 39.205.

(6) RULEMAKING.—The department shall adopt rules to implement this section.

Section 7. Subsections (1) and (2) of section 39.302, Florida Statutes, are amended to read:

39.302 Protective investigations of institutional child

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abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(37) or (54), acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.101(2) ~~s. 39.201(5)~~ and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the

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state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(2) (a) If in the course of the child protective investigation, the department finds that a subject of a report, by continued contact with children in care, constitutes a threatened harm to the physical health, mental health, or welfare of the children, the department may restrict a subject's access to the children pending the outcome of the investigation. The department or its agent shall employ the least restrictive means necessary to safeguard the physical health, mental health, and welfare of the children in care. This authority shall apply only to child protective investigations in which there is some evidence that child abuse, abandonment, or neglect has occurred. A subject of a report whose access to children in care has been restricted is entitled to petition the circuit court for judicial review. The court shall enter written findings of fact based upon the preponderance of evidence that child abuse, abandonment, or neglect did occur and that the department's restrictive action against a subject of the report was justified in order to safeguard the physical health, mental health, and welfare of the children in care. The restrictive action of the department shall be effective for no more than 90 days without a judicial finding supporting the actions of the department.

(b) In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own

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expense, or may be accompanied by another person, if the attorney or the person executes an affidavit of understanding with the department and agrees to comply with the confidentiality requirements under s. 39.202. The absence of an attorney or an accompanying person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In institutional child abuse cases when the institution is not operational and the child cannot otherwise be located, the investigation must commence immediately upon the resumption of operation. If requested by a state attorney or local law enforcement agency, the department shall furnish all investigative reports to such state attorney or agency.

(c) ~~(b)~~ Upon completion of the department's child protective investigation, the department may make application to the circuit court for continued restrictive action against any person necessary to safeguard the physical health, mental health, and welfare of the children in care.

Section 8. Present subsections (1), (2), and (3) of section 39.3035, Florida Statutes, are redesignated as subsections (2), (3), and (4), respectively, a new subsection (1) is added to that section, and present subsection (3) is amended, to read:

39.3035 Child advocacy centers; standards; state funding.—

(1) Child advocacy centers are facilities that offer multidisciplinary services in a community-based, child-focused environment to children who are alleged to be victims of abuse or neglect. The children served by such centers may have experienced a variety of types of abuse or neglect, including, but not limited to, sexual abuse or severe physical abuse. The

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813 centers bring together, often in one location, child protective
 814 investigators, law enforcement, prosecutors, and medical and
 815 mental health professionals to provide a coordinated,
 816 comprehensive response to victims and their caregivers.
 817 ~~(4) (3)~~ A child advocacy center within this state may not
 818 receive the funds generated pursuant to s. 938.10, state or
 819 federal funds administered by a state agency, or any other funds
 820 appropriated by the Legislature unless all of the standards of
 821 subsection (2) ~~(1)~~ are met and the screening requirement of
 822 subsection (3) ~~(2)~~ is met. The Florida Network of Children's
 823 Advocacy Centers, Inc., shall be responsible for tracking and
 824 documenting compliance with subsections (2) and (3) ~~(1)~~ and ~~(2)~~
 825 for any of the funds it administers to member child advocacy
 826 centers.
 827 (a) Funds for the specific purpose of funding children's
 828 advocacy centers shall be appropriated to the Department of
 829 Children and Families from funds collected from the additional
 830 court cost imposed in cases of certain crimes against minors
 831 under s. 938.10. Funds shall be disbursed to the Florida Network
 832 of Children's Advocacy Centers, Inc., as established under this
 833 section, for the purpose of providing community-based services
 834 that augment, but do not duplicate, services provided by state
 835 agencies.
 836 (b) The board of directors of the Florida Network of
 837 Children's Advocacy Centers, Inc., shall retain 10 percent of
 838 all revenues collected to be used to match local contributions,
 839 at a rate not to exceed an equal match, in communities
 840 establishing children's advocacy centers. The board of directors
 841 may use up to 5 percent of the remaining funds to support the

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842 activities of the network office and must develop funding
 843 criteria and an allocation methodology that ensures an equitable
 844 distribution of remaining funds among network participants. The
 845 criteria and methodologies must take into account factors that
 846 include, but need not be limited to, the center's accreditation
 847 status with respect to the National Children's Alliance, the
 848 number of clients served, and the population of the area being
 849 served by the children's advocacy center.
 850 (c) At the end of each fiscal year, each children's
 851 advocacy center receiving revenue as provided in this section
 852 must provide a report to the board of directors of the Florida
 853 Network of Children's Advocacy Centers, Inc., which reflects
 854 center expenditures, all sources of revenue received, and
 855 outputs that have been standardized and agreed upon by network
 856 members and the board of directors, such as the number of
 857 clients served, client demographic information, and number and
 858 types of services provided. The Florida Network of Children's
 859 Advocacy Centers, Inc., must compile reports from the centers
 860 and provide a report to the President of the Senate and the
 861 Speaker of the House of Representatives in August of each year.
 862 Section 9. Section 39.4092, Florida Statutes, is created to
 863 read:
 864 39.4092 Multidisciplinary legal representation model
 865 program for parents of children in the dependency system.—
 866 (1) LEGISLATIVE FINDINGS.—
 867 (a) The Legislature finds that the use of a specialized
 868 team that includes a lawyer, a social worker, and a parent-peer
 869 specialist, also known as a multidisciplinary legal
 870 representation model, in dependency judicial matters is

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871 effective in reducing safety risks to children and providing
 872 families with better outcomes, such as significantly reducing
 873 the time such children spend in out-of-home care and achieving
 874 permanency more quickly.

875 (b) The Legislature finds that parents in dependency court
 876 often suffer from multiple challenges, such as mental illness,
 877 substance use disorder, domestic violence and other trauma,
 878 unstable housing, and unemployment. Such issues are often a
 879 contributing factor to children experiencing instability or
 880 safety risks. While these issues may result in legal involvement
 881 or require legal representation, addressing such underlying
 882 challenges in a manner that achieves stability often falls
 883 within the core functions of the practice of social work.

884 (c) The Legislature also finds that social work
 885 professionals have a unique skill set, including client
 886 assessment and clinical knowledge of family dynamics. This
 887 unique skill set allows these professionals to interact and
 888 engage with clients in meaningful and unique ways that are
 889 distinct from the ways in which the clients interact with
 890 attorneys or other professional staff involved with dependency
 891 matters. Additionally, social work professionals are skilled at
 892 quickly connecting families facing such crises to resources that
 893 can address the specific underlying challenges.

894 (d) The Legislature finds that there is a great benefit to
 895 using parent-peer specialists in the dependency system, which
 896 allows parents who have successfully navigated the dependency
 897 system and have been successfully reunified with their children
 898 to be paired with parents whose children are currently involved
 899 in the dependency system. By working with someone who has

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900 personally lived the experience of overcoming great personal
 901 crisis, parents currently involved in the dependency system have
 902 a greater ability to address the underlying challenges that
 903 resulted in the instability and safety risk to the children,
 904 provide a safe and stable home environment, and be successfully
 905 reunified.

906 (e) The Legislature further finds that current federal
 907 provisions authorize the reimbursement of half the cost of
 908 attorneys for parents and children in eligible cases, whereas
 909 such funds were formerly restricted to foster care
 910 administrative costs.

911 (f) The Legislature finds it is necessary to encourage and
 912 facilitate the use of a multidisciplinary legal representation
 913 model for parents and their children in order to improve
 914 outcomes for those families involved in the dependency system
 915 and provide the families who find themselves in a crisis the
 916 best opportunity to be successful in creating safe and stable
 917 homes for their children.

918 (2) ESTABLISHMENT.—Each office of criminal conflict and
 919 civil regional counsel established under s. 27.511 may establish
 920 a multidisciplinary legal representation model program to serve
 921 families who are in the dependency system. The department shall
 922 collaborate with the office of criminal conflict and civil
 923 regional counsel to implement a program and provide funding with
 924 available federal matching resources for such multidisciplinary
 925 legal representation model programs for eligible families
 926 involved in the dependency system.

927 (3) PROGRAM REQUIREMENTS.—Any multidisciplinary legal
 928 representation model program established must, at a minimum:

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(a) Use a team that consists of a lawyer, a forensic social worker, and a parent-peer specialist. For purposes of this section, a "parent-peer specialist" means a person who has:

1. Previously had his or her child involved in the dependency system and removed from his or her care to be placed in out-of-home care;

2. Been successfully reunified with the child for more than 2 years; and

3. Received specialized training to become a parent-peer specialist.

(b) Provide any necessary cost-sharing agreements to maximize financial resources and enable access to available federal Title IV-E matching funding.

(c) Provide specialized training and support for attorneys, social workers, and parent-peer specialists involved in the model program.

(d) Collect uniform data on each child whose parent is served by the program and ensure that reporting of data is conducted through the child's unique FINS/fin identification number, if applicable.

(e) Develop consistent operational program policies and procedures throughout each region that establishes the model program.

(f) Obtain agreements with universities relating to approved placements for social work students to ensure the placement of social workers in the program.

(g) Execute conflict of interest agreements with each team member.

(4) REPORTING.—

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(a) Each regional office of the office of criminal conflict and civil regional counsel which establishes a multidisciplinary legal representation model program that meets the requirements of this section must provide an annual report to the Office of Program Policy Analysis and Government Accountability. The annual report must use the uniform data collected on each unique child whose parents are served by the program and must detail, at a minimum, all of the following:

1. Reasons for the original involvement of the family in the dependency system.

2. Length of time it takes to achieve a permanency goal for the children whose parents are served by the program.

3. Frequency of each type of permanency goal achieved by parents that are served by the program.

4. Rate of re-abuse or re-removal of children whose parents are served by the program.

5. Any other relevant factors that tend to show the impact of the use of such multidisciplinary legal representation model programs on the outcomes for children in the dependency system, provided each region that has established such a program agrees to uniform additional factors and how to collect data on such additional factors in the annual report.

(b) By October 1, 2022, and annually thereafter, the annual report from each regional counsel office must be submitted to the Office of Program Policy Analysis and Government Accountability, which shall compile the results of such reports and compare the reported outcomes from the multidisciplinary legal representation model program to known outcomes of children in the dependency system whose parents are not served by a

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multidisciplinary legal representation model program. By December 1, 2022, and annually thereafter, the Office of Program Policy Analysis and Government Accountability must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) RULEMAKING.—The office of criminal conflict and civil regional counsel may adopt rules to administer this section.

Section 10. Section 409.1415, Florida Statutes, is amended to read:

409.1415 Parenting partnerships for children in out-of-home care; resources.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that reunification is the most common outcome for children in out-of-home care and that caregivers are one of the most important resources to help children reunify with their families.

(b) The Legislature further finds that the most successful caregivers understand that their role goes beyond supporting the children in their care to supporting the children's families, as a whole, and that children and their families benefit when caregivers and birth or legal parents are supported by an agency culture that encourages a meaningful partnership between them and provides quality support.

(c) Therefore, in keeping with national trends, it is the intent of the Legislature to bring caregivers and birth or legal parents together in order to build strong relationships that lead to more successful reunifications and more stability for children being fostered in out-of-home care.

(2) PARENTING PARTNERSHIPS.—

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(a) In order to ensure that children in out-of-home care achieve legal permanency as soon as possible, to reduce the likelihood that they will reenter care or that other children in the family are abused or neglected or enter out-of-home care, and to ensure that families are fully prepared to resume custody of their children, the department and community-based care lead agencies shall develop and support relationships between caregivers and birth or legal parents of children in out-of-home care, to the extent that it is safe and in the child's best interest, by:

1. Facilitating telephone communication between the caregiver and the birth or legal parent as soon as possible after the child is placed in the home of the caregiver.

2. Facilitating and attending an in-person meeting between the caregiver and the birth or legal parent as soon as possible after the child is placed in the home of the caregiver.

3. Developing and supporting a plan for the birth or legal parent to participate in medical appointments, educational and extracurricular activities, and other events involving the child.

4. Facilitating participation by the caregiver in visitation between the birth or legal parent and the child.

5. Involving the caregiver in planning meetings with the birth or legal parent.

6. Developing and implementing effective transition plans for the child's return home or placement in any other living environment.

7. Supporting continued contact between the caregiver and the child after the child returns home or moves to another

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permanent living arrangement.

(b) To ensure that a child in out-of-home care receives support for healthy development which gives the child the best possible opportunity for success, caregivers, birth or legal parents, the department, and the community-based care lead agency shall work cooperatively in a respectful partnership by adhering to the following requirements:

1. All members of the partnership must interact and communicate professionally with one another, must share all relevant information promptly, and must respect the confidentiality of all information related to the child and his or her family.

2. The caregiver; the birth or legal parent; the child, if appropriate; the department; and the community-based care lead agency must participate in developing a case plan for the child and the birth or legal parent. All members of the team must work together to implement the case plan. The caregiver must have the opportunity to participate in all team meetings or court hearings related to the child's care and future plans. The department and community-based care lead agency must support and facilitate caregiver participation through timely notification of such meetings and hearings and provide alternative methods for participation for a caregiver who cannot be physically present at a meeting or hearing.

3. A caregiver must strive to provide, and the department and community-based care lead agency must support, excellent parenting, which includes:

a. A loving commitment to the child and the child's safety and well-being.

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b. Appropriate supervision and positive methods of discipline.

c. Encouragement of the child's strengths.

d. Respect for the child's individuality and likes and dislikes.

e. Providing opportunities to develop the child's interests and skills.

f. Being aware of the impact of trauma on behavior.

g. Facilitating equal participation of the child in family life.

h. Involving the child within his or her community.

i. A commitment to enable the child to lead a normal life.

4. A child in out-of-home care must be placed with a caregiver who has the ability to care for the child, is willing to accept responsibility for providing care, and is willing and able to learn about and be respectful of the child's culture, religion, and ethnicity; special physical or psychological needs; circumstances unique to the child; and family relationships. The department, the community-based care lead agency, and other agencies must provide a caregiver with all available information necessary to assist the caregiver in determining whether he or she is able to appropriately care for a particular child.

5. A caregiver must have access to and take advantage of all training that he or she needs to improve his or her skills in parenting a child who has experienced trauma due to neglect, abuse, or separation from home; to meet the child's special needs; and to work effectively with child welfare agencies, the courts, the schools, and other community and governmental

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1103 agencies.

1104 6. The department and community-based care lead agency must
1105 provide a caregiver with the services and support they need to
1106 enable them to provide quality care for the child pursuant to
1107 subsection (3).

1108 7. Once a caregiver accepts the responsibility of caring
1109 for a child, the child may be removed from the home of the
1110 caregiver only if:

1111 a. The caregiver is clearly unable to safely or legally
1112 care for the child;

1113 b. The child and the birth or legal parent are reunified;

1114 c. The child is being placed in a legally permanent home in
1115 accordance with a case plan or court order; or

1116 d. The removal is demonstrably in the best interests of the
1117 child.

1118 8. If a child must leave the caregiver's home for one of
1119 the reasons stated in subparagraph 7., and in the absence of an
1120 unforeseeable emergency, the transition must be accomplished
1121 according to a plan that involves cooperation and sharing of
1122 information among all persons involved, respects the child's
1123 developmental stage and psychological needs, ensures the child
1124 has all of his or her belongings, allows for a gradual
1125 transition from the caregiver's home, and, if possible, allows
1126 for continued contact with the caregiver after the child leaves.

1127 9. When the case plan for a child includes reunification,
1128 the caregiver, the department, and the community-based care lead
1129 agency must work together to assist the birth or legal parent in
1130 improving his or her ability to care for and protect the child
1131 and to provide continuity for the child.

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1132 10. A caregiver must respect and support the child's ties
1133 to his or her birth or legal family, including parents,
1134 siblings, and extended family members, and must assist the child
1135 in maintaining allowable visitation and other forms of
1136 communication. The department and community-based care lead
1137 agency must provide a caregiver with the information, guidance,
1138 training, and support necessary for fulfilling this
1139 responsibility.

1140 11. A caregiver must work in partnership with the
1141 department and community-based care lead agency to obtain and
1142 maintain records that are important to the child's well-being,
1143 including, but not limited to, child resource records, medical
1144 records, school records, photographs, and records of special
1145 events and achievements.

1146 12. A caregiver must advocate for a child in his or her
1147 care with the child welfare system, the court, and community
1148 agencies, including schools, child care providers, health and
1149 mental health providers, and employers. The department and
1150 community-based care lead agency must support a caregiver in
1151 advocating for a child and may not retaliate against the
1152 caregiver as a result of this advocacy.

1153 13. A caregiver must be as fully involved in the child's
1154 medical, psychological, and dental care as he or she would be
1155 for his or her biological child. The department and community-
1156 based care lead agency must support and facilitate such
1157 participation. The caregiver, the department, and the community-
1158 based care lead agency must share information with each other
1159 about the child's health and well-being.

1160 14. A caregiver must support a child's school success,

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including, when possible, maintaining school stability by participating in school activities and meetings. The department and community-based care lead agency must facilitate this participation and be informed of the child's progress and needs.

15. A caregiver must ensure that a child in his or her care who is between 13 and 17 years of age learns and masters independent living skills. The department shall make available the training for caregivers developed in collaboration with the Florida Foster and Adoptive Parent Association and the Quality Parenting Initiative on the life skills necessary for children in out-of-home care.

16. The case manager and case manager supervisor must mediate disagreements that occur between a caregiver and the birth or legal parent.

(c) An employee of a residential group home must meet the background screening requirements under s. 39.0138 and the level 2 screening standards for screening under chapter 435. An employee of a residential group home who works directly with a child as a caregiver must meet, at a minimum, the same education, training, background, and other screening requirements as caregivers in family foster homes licensed as level II under s. 409.175(5).

(3) RESOURCES AND SUPPORT FOR CAREGIVERS.—

(a) Foster parents.—The department shall establish the Foster Information Center to connect current and former foster parents, known as foster parent advocates, to prospective and current foster parents in order to provide information and services, including, but not limited to:

1. Navigating the application and approval process,

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including timelines for each, preparing for transitioning from approval for placement to accepting a child into the home, and learning about and connecting with any available resources in the prospective foster parent's community.

2. Accessing available resources and services, including those from the Florida Foster and Adoptive Parent Association, for any current foster parents who need additional assistance.

3. Providing information specific to a foster parent's individual needs.

4. Providing immediate assistance when needed.

(b) Kinship caregivers.—

1. A community-based care lead agency shall provide a caregiver with resources and supports that are available and discuss whether the caregiver meets any eligibility criteria. If the caregiver is unable to access resources and supports beneficial to the well-being of the child, the community-based care lead agency or case management agency must assist the caregiver in initiating access to resources by:

a. Providing referrals to kinship navigation services.

b. Assisting with linkages to community resources and completion of program applications.

c. Scheduling appointments.

d. Initiating contact with community service providers.

2. The community-based care lead agency shall provide each caregiver with a telephone number to call during normal working hours whenever immediate assistance is needed and the child's caseworker is unavailable. The telephone number must be staffed and answered by individuals possessing the knowledge and authority necessary to assist caregivers.

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1219 ~~(4)(3)~~ RULEMAKING.—The department shall adopt rules
1220 necessary to administer this section.

1221 Section 11. Section 409.1453, Florida Statutes, is
1222 repealed.

1223 Section 12. Section 409.1753, Florida Statutes, is
1224 repealed.

1225 Section 13. The Legislature recognizes that animal cruelty
1226 of any kind is a type of interpersonal violence and often co-
1227 occurs with child abuse and other forms of family violence,
1228 including elder abuse and domestic violence, and that early
1229 identification of animal cruelty, including animal sexual abuse,
1230 serves the purpose of providing an important tool to safeguard
1231 children from abuse and neglect, to provide needed support to
1232 families, and to protect animals.

1233 Section 14. Section 827.071, Florida Statutes, is amended
1234 to read:

1235 827.071 Sexual performance by a child; penalties.—

1236 (1) As used in this section, the following definitions
1237 shall apply:

1238 (a) "Deviate sexual intercourse" means sexual conduct
1239 between persons not married to each other consisting of contact
1240 between the penis and the anus, the mouth and the penis, or the
1241 mouth and the vulva.

1242 (b) "Intentionally view" means to deliberately,
1243 purposefully, and voluntarily view. Proof of intentional viewing
1244 requires establishing more than a single image, motion picture,
1245 exhibition, show, image, data, computer depiction,
1246 representation, or other presentation over any period of time.

1247 (c) "Performance" means any play, motion picture,

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1248 photograph, or dance or any other visual representation
1249 exhibited before an audience.

1250 (d) "Promote" means to procure, manufacture, issue, sell,
1251 give, provide, lend, mail, deliver, transfer, transmute,
1252 publish, distribute, circulate, disseminate, present, exhibit,
1253 or advertise or to offer or agree to do the same.

1254 (e) "Sodomasochistic abuse" means flagellation or torture
1255 by or upon a person, or the condition of being fettered, bound,
1256 or otherwise physically restrained, for the purpose of deriving
1257 sexual satisfaction from inflicting harm on another or receiving
1258 such harm oneself.

1259 (f) "Sexual battery" means oral, anal, or vaginal
1260 penetration by, or union with, the sexual organ of another or
1261 the anal or vaginal penetration of another by any other object;
1262 however, "sexual battery" does not include an act done for a
1263 bona fide medical purpose.

1264 (g) "Sexual contact with an animal" has the same meaning as
1265 in s. 828.126 when an adult encourages or forces such act to be
1266 committed between a child and an animal ~~bestiality" means any~~
1267 ~~sexual act between a person and an animal involving the sex~~
1268 ~~organ of the one and the mouth, anus, or vagina of the other.~~

1269 (h) "Sexual conduct" means actual or simulated sexual
1270 intercourse, deviate sexual intercourse, sexual contact with an
1271 animal ~~bestiality~~, masturbation, or sodomasochistic abuse;
1272 actual lewd exhibition of the genitals; actual physical contact
1273 with a person's clothed or unclothed genitals, pubic area,
1274 buttocks, or, if such person is a female, breast, with the
1275 intent to arouse or gratify the sexual desire of either party;
1276 or any act or conduct which constitutes sexual battery or

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1277 simulates that sexual battery is being or will be committed. A
 1278 mother's breastfeeding of her baby does not under any
 1279 circumstance constitute "sexual conduct."

1280 (i) "Sexual performance" means any performance or part
 1281 thereof which includes sexual conduct by a child of less than 18
 1282 years of age.

1283 (j) "Simulated" means the explicit depiction of conduct set
 1284 forth in paragraph (h) which creates the appearance of such
 1285 conduct and which exhibits any uncovered portion of the breasts,
 1286 genitals, or buttocks.

1287 (2) A person is guilty of the use of a child in a sexual
 1288 performance if, knowing the character and content thereof, he or
 1289 she employs, authorizes, or induces a child less than 18 years
 1290 of age to engage in a sexual performance or, being a parent,
 1291 legal guardian, or custodian of such child, consents to the
 1292 participation by such child in a sexual performance. Whoever
 1293 violates this subsection is guilty of a felony of the second
 1294 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1295 775.084.

1296 (3) A person is guilty of promoting a sexual performance by
 1297 a child when, knowing the character and content thereof, he or
 1298 she produces, directs, or promotes any performance which
 1299 includes sexual conduct by a child less than 18 years of age.
 1300 Whoever violates this subsection is guilty of a felony of the
 1301 second degree, punishable as provided in s. 775.082, s. 775.083,
 1302 or s. 775.084.

1303 (4) It is unlawful for any person to possess with the
 1304 intent to promote any photograph, motion picture, exhibition,
 1305 show, representation, or other presentation which, in whole or

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1306 in part, includes any sexual conduct by a child. The possession
 1307 of three or more copies of such photograph, motion picture,
 1308 representation, or presentation is prima facie evidence of an
 1309 intent to promote. Whoever violates this subsection is guilty of
 1310 a felony of the second degree, punishable as provided in s.
 1311 775.082, s. 775.083, or s. 775.084.

1312 (5) (a) It is unlawful for any person to knowingly possess,
 1313 control, or intentionally view a photograph, motion picture,
 1314 exhibition, show, representation, image, data, computer
 1315 depiction, or other presentation which, in whole or in part, he
 1316 or she knows to include any sexual conduct by a child. The
 1317 possession, control, or intentional viewing of each such
 1318 photograph, motion picture, exhibition, show, image, data,
 1319 computer depiction, representation, or presentation is a
 1320 separate offense. If such photograph, motion picture,
 1321 exhibition, show, representation, image, data, computer
 1322 depiction, or other presentation includes sexual conduct by more
 1323 than one child, then each such child in each such photograph,
 1324 motion picture, exhibition, show, representation, image, data,
 1325 computer depiction, or other presentation that is knowingly
 1326 possessed, controlled, or intentionally viewed is a separate
 1327 offense. A person who violates this subsection commits a felony
 1328 of the third degree, punishable as provided in s. 775.082, s.
 1329 775.083, or s. 775.084.

1330 (b) This subsection does not apply to material possessed,
 1331 controlled, or intentionally viewed as part of a law enforcement
 1332 investigation.

1333 (6) Prosecution of any person for an offense under this
 1334 section shall not prohibit prosecution of that person in this

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state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

Section 15. Section 828.126, Florida Statutes, is amended to read:

828.126 Sexual activities involving animals.—

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

(a) "Animal husbandry" includes the day-to-day care of, selective breeding of, and the raising of livestock that is commonly defined as domesticated animals or animals raised for agricultural purposes and that is located on land used for bona fide agricultural purposes as defined in s. 193.461(3) (b)
~~"Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.~~

(b) "Sexual contact with an animal" means any act committed between a person and an animal for the purpose of sexual gratification, abuse, or financial gain which involves:

1. Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;

2. The fondling of the sex organ or anus of an animal; or

3. The insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person contact, however slight, between the mouth, sex organ, or anus of a person and

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~~the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.~~

(2) A person may not:

(a) Knowingly engage in any ~~sexual conduct or~~ sexual contact with an animal;

(b) Knowingly cause, aid, or abet another person to engage in any ~~sexual conduct or~~ sexual contact with an animal;

(c) Knowingly permit any ~~sexual conduct or~~ sexual contact with an animal to be conducted on any premises under his or her charge or control; or

(d) Knowingly organize, promote, conduct, ~~advertise,~~ aid, abet, participate in as an observer, or advertise, offer, solicit, or accept an offer of an animal for the purpose of sexual contact with such animal, or perform any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal ~~for a commercial or recreational purpose.~~

(e) Knowingly film, distribute, or possess pornographic images of a person and an animal engaged in any of the activities prohibited by this section.

(3) A person who violates this section commits a felony of the third misdemeanor of the first degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(4) In addition to other penalties prescribed by law, the court shall issue an order prohibiting a person convicted under this section from harboring, owning, possessing, or exercising control over any animal; from residing in any household where

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1393 animals are present; and from engaging in an occupation, whether
 1394 paid or unpaid, or participating in a volunteer position at any
 1395 establishment where animals are present. The order may be
 1396 effective for up to 5 years from the date of the conviction
 1397 regardless of whether adjudication is withheld.

1398 (5)(4) This section does not apply to accepted animal
 1399 husbandry practices, accepted conformation judging practices, ~~or~~
 1400 accepted veterinary medical practices, or artificial
 1401 insemination of an animal for reproductive purposes.

1402 Section 16. Paragraph (a) of subsection (4) of section
 1403 828.27, Florida Statutes, is amended to read:

1404 828.27 Local animal control or cruelty ordinances;
 1405 penalty.—

1406 (4)(a)1. County-employed animal control officers must, and
 1407 municipally employed animal control officers may, successfully
 1408 complete a 40-hour minimum standards training course. Such
 1409 course must include, but is not limited to, training for: animal
 1410 cruelty investigations, search and seizure, animal handling,
 1411 courtroom demeanor, and civil citations. The course curriculum
 1412 must be approved by the Florida Animal Control Association. An
 1413 animal control officer who successfully completes such course
 1414 shall be issued a certificate indicating that he or she has
 1415 received a passing grade.

1416 2. County-employed and municipally employed animal control
 1417 officers must successfully complete the 1-hour training course
 1418 developed by the Department of Children and Families and the
 1419 Florida Animal Control Association pursuant to s. 39.208(5).
 1420 Animal control officers must be provided with opportunities to
 1421 attend the training during their normal work hours.

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1422 3.2- Any animal control officer who is authorized before
 1423 January 1, 1990, by a county or municipality to issue citations
 1424 is not required to complete the minimum standards training
 1425 course.

1426 4.3- In order to maintain valid certification, every 2
 1427 years each certified animal control officer must complete 4
 1428 hours of postcertification continuing education training. Such
 1429 training may include, but is not limited to, training for:
 1430 animal cruelty investigations, search and seizure, animal
 1431 handling, courtroom demeanor, and civil citations.

1432 Section 17. Paragraph (f) of subsection (3) of section
 1433 921.0022, Florida Statutes, is amended to read:

1434 921.0022 Criminal Punishment Code; offense severity ranking
 1435 chart.—

1436 (3) OFFENSE SEVERITY RANKING CHART

1437 (f) LEVEL 6

	Florida Statute	Felony Degree	Description
1439	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
1440	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
1441	400.9935(4)(c)	2nd	Operating a clinic, or offering services

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			requiring licensure, without a license.	
1442	499.0051 (2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.	
1443	499.0051 (3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.	
1444	499.0051 (4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.	
1445	775.0875 (1)	3rd	Taking firearm from law enforcement officer.	
1446	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.	
1447	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.	
1448	784.041	3rd	Felony battery; domestic	

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

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			battery by strangulation.	
1449	784.048 (3)	3rd	Aggravated stalking; credible threat.	
1450	784.048 (5)	3rd	Aggravated stalking of person under 16.	
1451	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.	
1452	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.	
1453	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.	
1454	784.081 (2)	2nd	Aggravated assault on specified official or employee.	
1455	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.	

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

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1456			
	784.083 (2)	2nd	Aggravated assault on code inspector.
1457			
	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
1458			
	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
1459			
	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
1460			
	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.
1461			
	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or

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			vehicles.
1462			
	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
1463			
	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
1464			
	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.
1465			
	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
1466			
	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
1467			
	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.

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	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
1469	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
1470	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
1471	812.015(9)(a)	2nd	Retail theft; property stolen \$750 or more; second or subsequent conviction.
1472	812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is \$3,000 or more; coordination of others.
1473	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
1474			

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	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
1475	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
1476	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
1477	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
1478	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
1479	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
1480	827.03(2)(c)	3rd	Abuse of a child.
1481	827.03(2)(d)	3rd	Neglect of a child.

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	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
1483	<u>828.126</u>	<u>3rd</u>	<u>Sexual activities involving animals.</u>
1484	836.05	2nd	Threats; extortion.
1485	836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
1486	843.12	3rd	Aids or assists person to escape.
1487	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
1488	847.012	3rd	Knowingly using a minor in the production of materials harmful to

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			minors.
1489	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
1490	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
1491	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.
1492	944.40	2nd	Escapes.
1493	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
1494	944.47(1)(a)5.	2nd	Introduction of

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contraband (firearm,
weapon, or explosive)
into correctional
facility.

951.22(1)(i)

3rd

Firearm or weapon
introduced into county
detention facility.

Section 18. Paragraph (c) is added to subsection (6) of
1012.795, Florida Statutes, to read:

1012.795 Education Practices Commission; authority to
discipline.—

(6)

(c) If the Department of Education determines that any
instructional personnel or school administrator, as defined in
s. 1012.01(2) or (3), respectively, has knowingly failed to
report known or suspected child abuse as required pursuant to s.
39.201, and the Education Practices Commission has issued a
final order for a previous instance of failure to report by the
individual, the Education Practices Commission shall, at a
minimum, suspend the educator certificate of the instructional
personnel or school administrator for a period of not less than
1 year.

Section 19. Subsection (6) of section 39.301, Florida
Statutes, is amended to read:

39.301 Initiation of protective investigations.—

(6) Upon commencing an investigation under this part, if a
report was received from a reporter under s. 39.201(1)(a)2. ~~s.~~

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~~39.201(1)(b)~~, the protective investigator must provide his or
her contact information to the reporter within 24 hours after
being assigned to the investigation. The investigator must also
advise the reporter that he or she may provide a written summary
of the report made to the central abuse hotline to the
investigator which shall become a part of the electronic child
welfare case file.

Section 20. Paragraph (d) of subsection (4) of section
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an
individual resides and includes the physical address, mailing
address, street address, parcel identification number, plot
identification number, legal property description, neighborhood
name and lot number, GPS coordinates, and any other descriptive
property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers,
personal cellular telephone numbers, personal pager telephone
numbers, and telephone numbers associated with personal
communications devices.

2.a. The home addresses, telephone numbers, dates of birth,
and photographs of active or former sworn law enforcement
personnel or of active or former civilian personnel employed by
a law enforcement agency, including correctional and
correctional probation officers, personnel of the Department of
Children and Families whose duties include the investigation of

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1546 abuse, neglect, exploitation, fraud, theft, or other criminal
 1547 activities, personnel of the Department of Health whose duties
 1548 are to support the investigation of child abuse or neglect, and
 1549 personnel of the Department of Revenue or local governments
 1550 whose responsibilities include revenue collection and
 1551 enforcement or child support enforcement; the names, home
 1552 addresses, telephone numbers, photographs, dates of birth, and
 1553 places of employment of the spouses and children of such
 1554 personnel; and the names and locations of schools and day care
 1555 facilities attended by the children of such personnel are exempt
 1556 from s. 119.07(1) and s. 24(a), Art. I of the State
 1557 Constitution.

1558 b. The home addresses, telephone numbers, dates of birth,
 1559 and photographs of current or former nonsworn investigative
 1560 personnel of the Department of Financial Services whose duties
 1561 include the investigation of fraud, theft, workers' compensation
 1562 coverage requirements and compliance, other related criminal
 1563 activities, or state regulatory requirement violations; the
 1564 names, home addresses, telephone numbers, dates of birth, and
 1565 places of employment of the spouses and children of such
 1566 personnel; and the names and locations of schools and day care
 1567 facilities attended by the children of such personnel are exempt
 1568 from s. 119.07(1) and s. 24(a), Art. I of the State
 1569 Constitution.

1570 c. The home addresses, telephone numbers, dates of birth,
 1571 and photographs of current or former nonsworn investigative
 1572 personnel of the Office of Financial Regulation's Bureau of
 1573 Financial Investigations whose duties include the investigation
 1574 of fraud, theft, other related criminal activities, or state

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1575 regulatory requirement violations; the names, home addresses,
 1576 telephone numbers, dates of birth, and places of employment of
 1577 the spouses and children of such personnel; and the names and
 1578 locations of schools and day care facilities attended by the
 1579 children of such personnel are exempt from s. 119.07(1) and s.
 1580 24(a), Art. I of the State Constitution.

1581 d. The home addresses, telephone numbers, dates of birth,
 1582 and photographs of current or former firefighters certified in
 1583 compliance with s. 633.408; the names, home addresses, telephone
 1584 numbers, photographs, dates of birth, and places of employment
 1585 of the spouses and children of such firefighters; and the names
 1586 and locations of schools and day care facilities attended by the
 1587 children of such firefighters are exempt from s. 119.07(1) and
 1588 s. 24(a), Art. I of the State Constitution.

1589 e. The home addresses, dates of birth, and telephone
 1590 numbers of current or former justices of the Supreme Court,
 1591 district court of appeal judges, circuit court judges, and
 1592 county court judges; the names, home addresses, telephone
 1593 numbers, dates of birth, and places of employment of the spouses
 1594 and children of current or former justices and judges; and the
 1595 names and locations of schools and day care facilities attended
 1596 by the children of current or former justices and judges are
 1597 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 1598 Constitution.

1599 f. The home addresses, telephone numbers, dates of birth,
 1600 and photographs of current or former state attorneys, assistant
 1601 state attorneys, statewide prosecutors, or assistant statewide
 1602 prosecutors; the names, home addresses, telephone numbers,
 1603 photographs, dates of birth, and places of employment of the

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spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or

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other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II,

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1662 juvenile justice counselors, juvenile justice counselor
 1663 supervisors, human services counselor administrators, senior
 1664 human services counselor administrators, rehabilitation
 1665 therapists, and social services counselors of the Department of
 1666 Juvenile Justice; the names, home addresses, telephone numbers,
 1667 dates of birth, and places of employment of spouses and children
 1668 of such personnel; and the names and locations of schools and
 1669 day care facilities attended by the children of such personnel
 1670 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 1671 Constitution.

1672 1. The home addresses, telephone numbers, dates of birth,
 1673 and photographs of current or former public defenders, assistant
 1674 public defenders, criminal conflict and civil regional counsel,
 1675 and assistant criminal conflict and civil regional counsel; the
 1676 names, home addresses, telephone numbers, dates of birth, and
 1677 places of employment of the spouses and children of current or
 1678 former public defenders, assistant public defenders, criminal
 1679 conflict and civil regional counsel, and assistant criminal
 1680 conflict and civil regional counsel; and the names and locations
 1681 of schools and day care facilities attended by the children of
 1682 current or former public defenders, assistant public defenders,
 1683 criminal conflict and civil regional counsel, and assistant
 1684 criminal conflict and civil regional counsel are exempt from s.
 1685 119.07(1) and s. 24(a), Art. I of the State Constitution.

1686 m. The home addresses, telephone numbers, dates of birth,
 1687 and photographs of current or former investigators or inspectors
 1688 of the Department of Business and Professional Regulation; the
 1689 names, home addresses, telephone numbers, dates of birth, and
 1690 places of employment of the spouses and children of such current

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1691 or former investigators and inspectors; and the names and
 1692 locations of schools and day care facilities attended by the
 1693 children of such current or former investigators and inspectors
 1694 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 1695 Constitution.

1696 n. The home addresses, telephone numbers, and dates of
 1697 birth of county tax collectors; the names, home addresses,
 1698 telephone numbers, dates of birth, and places of employment of
 1699 the spouses and children of such tax collectors; and the names
 1700 and locations of schools and day care facilities attended by the
 1701 children of such tax collectors are exempt from s. 119.07(1) and
 1702 s. 24(a), Art. I of the State Constitution.

1703 o. The home addresses, telephone numbers, dates of birth,
 1704 and photographs of current or former personnel of the Department
 1705 of Health whose duties include, or result in, the determination
 1706 or adjudication of eligibility for social security disability
 1707 benefits, the investigation or prosecution of complaints filed
 1708 against health care practitioners, or the inspection of health
 1709 care practitioners or health care facilities licensed by the
 1710 Department of Health; the names, home addresses, telephone
 1711 numbers, dates of birth, and places of employment of the spouses
 1712 and children of such personnel; and the names and locations of
 1713 schools and day care facilities attended by the children of such
 1714 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 1715 the State Constitution.

1716 p. The home addresses, telephone numbers, dates of birth,
 1717 and photographs of current or former impaired practitioner
 1718 consultants who are retained by an agency or current or former
 1719 employees of an impaired practitioner consultant whose duties

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1720 result in a determination of a person's skill and safety to
 1721 practice a licensed profession; the names, home addresses,
 1722 telephone numbers, dates of birth, and places of employment of
 1723 the spouses and children of such consultants or their employees;
 1724 and the names and locations of schools and day care facilities
 1725 attended by the children of such consultants or employees are
 1726 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 1727 Constitution.

1728 q. The home addresses, telephone numbers, dates of birth,
 1729 and photographs of current or former emergency medical
 1730 technicians or paramedics certified under chapter 401; the
 1731 names, home addresses, telephone numbers, dates of birth, and
 1732 places of employment of the spouses and children of such
 1733 emergency medical technicians or paramedics; and the names and
 1734 locations of schools and day care facilities attended by the
 1735 children of such emergency medical technicians or paramedics are
 1736 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 1737 Constitution.

1738 r. The home addresses, telephone numbers, dates of birth,
 1739 and photographs of current or former personnel employed in an
 1740 agency's office of inspector general or internal audit
 1741 department whose duties include auditing or investigating waste,
 1742 fraud, abuse, theft, exploitation, or other activities that
 1743 could lead to criminal prosecution or administrative discipline;
 1744 the names, home addresses, telephone numbers, dates of birth,
 1745 and places of employment of spouses and children of such
 1746 personnel; and the names and locations of schools and day care
 1747 facilities attended by the children of such personnel are exempt
 1748 from s. 119.07(1) and s. 24(a), Art. I of the State

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1749 Constitution.

1750 s. The home addresses, telephone numbers, dates of birth,
 1751 and photographs of current or former directors, managers,
 1752 supervisors, nurses, and clinical employees of an addiction
 1753 treatment facility; the home addresses, telephone numbers,
 1754 photographs, dates of birth, and places of employment of the
 1755 spouses and children of such personnel; and the names and
 1756 locations of schools and day care facilities attended by the
 1757 children of such personnel are exempt from s. 119.07(1) and s.
 1758 24(a), Art. I of the State Constitution. For purposes of this
 1759 sub-subparagraph, the term "addiction treatment facility" means
 1760 a county government, or agency thereof, that is licensed
 1761 pursuant to s. 397.401 and provides substance abuse prevention,
 1762 intervention, or clinical treatment, including any licensed
 1763 service component described in s. 397.311(26).

1764 t. The home addresses, telephone numbers, dates of birth,
 1765 and photographs of current or former directors, managers,
 1766 supervisors, and clinical employees of a child advocacy center
 1767 that meets the standards of s. 39.3035(2) ~~s. 39.3035(1)~~ and
 1768 fulfills the screening requirement of s. 39.3035(3) ~~s.~~
 1769 ~~39.3035(2)~~, and the members of a Child Protection Team as
 1770 described in s. 39.303 whose duties include supporting the
 1771 investigation of child abuse or sexual abuse, child abandonment,
 1772 child neglect, and child exploitation or to provide services as
 1773 part of a multidisciplinary case review team; the names, home
 1774 addresses, telephone numbers, photographs, dates of birth, and
 1775 places of employment of the spouses and children of such
 1776 personnel and members; and the names and locations of schools
 1777 and day care facilities attended by the children of such

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personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency shall release the specified information to the party authorized to receive such information.

5. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 21. Subsection (4) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence

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or misconduct of minor.—

(4) Notwithstanding subsections (1) and (2), if a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01 ~~s. 39.01(55)~~, an authorized representative of a residential group home at which such a minor resides, the caseworker at the agency at which the state has placed the minor, or a guardian ad litem specifically authorized by the minor's caregiver to sign for a learner's driver license signs the minor's application for a learner's driver license, that caregiver, group home representative, caseworker, or guardian ad litem does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application. Before signing the application, the caseworker, authorized group home representative, or guardian ad litem shall notify the caregiver or other responsible party of his or her intent to sign and verify the application.

Section 22. Paragraph (g) of subsection (2) of section 934.03, Florida Statutes, is amended to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)

(g) It is lawful under this section and ss. 934.04-934.09 for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.102, a public utility, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;

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2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or

3. The central abuse hotline operated pursuant to s. 39.101 ~~s. 39.201~~

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

Section 23. This act shall take effect October 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 148

INTRODUCER: Regulated Industries Committee and Senator Bradley

SUBJECT: Beverage Law

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2. <u>Reeve</u>	<u>McKay</u>	<u>CM</u>	Favorable
3. <u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 148 permits food service establishments with a “special restaurant license,” or an “SRX license,” to sell and deliver alcoholic beverage drinks prepared and sealed by the licensee as well as manufacture-sealed beer, wine, and liquor for off-premises consumption under certain conditions. Alcoholic beverages sold for off-premises consumption must be accompanied by the sale of food within the same order.

Current law requires SRX licensees to derive at least 51 percent of gross food and beverage revenue from the sale of food and nonalcoholic beverages, in addition to meeting other requirements. Such establishments may not sell manufacturer-sealed containers of distilled spirits for off-premises consumption.

The bill requires alcoholic beverage drinks to be sealed by the licensee with an unbroken seal that prevents the beverage from being consumed, and placed in a bag or other container secured in such a manner that it is visibly apparent if the container has been opened or tampered with. A dated receipt of the beverage and meal must be provided and attached to the container. Containers for alcoholic beverages sold or delivered for off-premises consumption may not exceed 32 ounces. Alcoholic beverages prepared and sealed by the licensee that are delivered or transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.

The bill takes effect July 1, 2021.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor.² The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Quota Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses may also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

Special Restaurant License

The limitation on the number of quota licenses per county does not apply to a food service establishment that has at least 2,500 square feet of service area, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month operating period thereafter.³ This type of license is known as a “special restaurant license” or an “SRX license.”⁴

A food service establishment holding an SRX license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.⁵

¹ Section 561.02, F.S.

² Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

³ Section 561.20(2)(a)4., F.S. The required square footage and number of persons the restaurant must be equipped to serve may be different for county or municipality jurisdiction due to special acts enacted by the Legislature that affect these requirements for the county or municipality. For a list of the special act requirements for counties and municipalities, including the applicable act in the Laws of Florida, see: Division of Alcoholic Beverages and Tobacco, *General Laws of Local Application and Special Acts*, available at www.myfloridalicense.com/dbpr/abt/documents/GENLAWS.pdf (last visited Mar. 8, 2021).

⁴ The division has re-designated the “SRX” license to an “SFS” license or “Special Food Service Establishment” license. However, these licenses are still commonly known as “SRX” licenses.

⁵ Section 561.20(2)(a)4., F.S.

The annual fee for an SRX license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.⁶

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone, electronic, or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.⁷

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party, including, but not limited to, common carriers.

By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁸

Common carriers⁹ may transport alcoholic beverages.¹⁰ The recipient's age and identity must be verified at the time of delivery. All deliveries by a licensee or a third-party must comply with s. 562.11, F.S., which prohibits selling, giving, serving, or permitting to be served alcoholic beverages to a person under 21 years of age.¹¹

COVID-19-Related Executive Orders by the Governor

On March 9, 2020, the Governor issued Executive Order 20-52 to declare a state of emergency for the State of Florida in response to the COVID-19 pandemic.¹²

On March 17, 2020, the Governor issued Executive Order 20-68 to order all restaurants to immediately limit occupancy to 50 percent of the building's current occupancy, to comply with social distancing requirements, and to implement a health screening protocol for employees.¹³

On March 20, 2020, the Governor issued Executive Order 20-71 to suspend all sales of food for consumption on premises, and all sales of alcoholic beverages by the drink or in sealed

⁶ Section 565.02(1)(b)-(f), F.S.

⁷ Section 561.57(1), F.S.

⁸ Section 561.57(2), F.S.

⁹ Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

¹⁰ Section 561.57(5), F.S.

¹¹ Section 561.57(6), F.S.

¹² The Governor's executive orders were issued pursuant to his authority under Article IV, s. (1)(a) of the State Constitution and the State Emergency Management Act found in ss. 252.31 and 252.60, F.S.

¹³ Fla. Exec. Order No. 20-68 (Mar. 17, 2020).

containers for consumption on the premises. The order allowed vendors to continue to sell food and alcoholic beverages in sealed containers for off-premises consumption.¹⁴

Executive Order 20-71 also suspended the restriction in s. 561.20(2)(a)4., F.S., prohibiting an SRX restaurant licensee from making package sales of alcoholic beverages, provided the SRX licensee complied with the restrictions in Executive Order 20-68.¹⁵ The executive order required that:

- Any sale of an alcoholic beverage in a sealed container for consumption off-premises must be accompanied by the sale of food within the same order; and
- Any delivery of an alcoholic beverage must comply with the delivery requirements in s. 561.57, F.S.

Under the executive order, the suspension of the package sale restriction for SRX licenses was effective through the expiration of the state of emergency declared in Executive Order 20-52, including any extensions thereof. Executive order 20-52 has been extended six times since its issuance, most recently on December 29, 2020.¹⁶

The Governor's suspension of the package sale prohibition in s. 561.20(2)(a)4., F.S., permitted SRX licensees to sell, for off-premises consumption, alcoholic beverages in sealed containers, i.e., in containers sealed by the manufacturer. The executive order did not authorize alcoholic beverage vendors to sell liquor-based or wine-based mixed drinks for consumption off-premises. As noted by the DBPR, "unless otherwise permitted by law, the sale of alcoholic beverages in sealed containers requires the containers to be sealed by the manufacturer."¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 561.20(2)(a)4., F.S., to permit food service establishments, i.e., restaurants, with SRX licenses to sell and deliver alcoholic beverages for off-premises consumption under certain conditions.

Section 2 creates s. 561.575, F.S., to provide requirements for deliveries of alcoholic beverages by SRX licensees. Under the bill, SRX licensees may sell and deliver manufacturer-sealed containers of beer and wine for off-premises consumption. The bill also allows SRX licensees to sell and deliver any alcoholic beverage drink that is prepared and sealed by the licensee or its employee, including wine-based and liquor-based beverages, for off-premises consumption. Alcoholic beverages sold for off-premises consumption must be accompanied by the sale of food within the same order.

¹⁴ Fla. Exec. Order No. 20-71 (Mar. 20, 2020).

¹⁵ *Id.*

¹⁶ Fla. Exec. Order No. 20-316 (Dec. 29, 2020). Section 252.36(2), F.S., provides that states of emergency may not continue for more than 60 days unless renewed by the Governor.

¹⁷ See Division of Business and Professional Regulation, *Frequently Asked Questions Related to Executive Order 20-71*, available at www.myfloridalicense.com/DBPR/os/documents/DBPR%20FAQs%20re%20EO%2020-71.pdf (last visited Mar. 8, 2021).

Containers for alcoholic beverages sold or delivered for off-premises consumption may not exceed 32 ounces. Malt beverage containers must comply with the container size, labeling, and filling requirements of s. 563.03, F.S., except that such containers may not exceed 32 ounces.¹⁸

The bill requires alcoholic beverage drinks prepared and sold or delivered for off-premises consumption to be securely sealed by the licensee with an unbroken seal that prevents the beverage from being immediately consumed before removal from the premises. Alcoholic beverage drinks prepared and sealed by the licensee must be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt of the beverage and meal must be provided and attached to the container.

Alcoholic beverages that are prepared and sealed by the licensee and delivered or transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.¹⁹

SRX licensees must comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.

The bill expressly prohibits an SRX licensee from selling manufacturer-sealed containers of distilled spirits for off-premises consumption.

Section 3 amends s. 316.1936(9), F.S., to provide that an alcoholic beverage that has been sealed by a licensee or employee is not an open container under the prohibition against open containers of alcoholic beverages in a motor vehicle.

Section 4 provides an effective date of 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.

¹⁸ Section 563.06(7), F.S., permits a malt beverage growler to hold 32, 64, or 128 ounces of malt beverage.

¹⁹ The sealing and transportation requirements in the bill are comparable to the requirements found in s. 564.09, F.S., for the sealing and transportation of a bottle of wine partially consumed at a restaurant.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may enable qualifying food service establishments to increase their sales revenue through the sale of alcoholic beverages with food delivery orders.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 561.20 and 316.1936 of the Florida Statutes.
This bill creates section 561.575 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Regulated Industries on February 17, 2021:

The committee substitute:

- Clarifies that wine-based and liquor-based beverages prepared and sealed by the licensee may be sold or delivered for off-premises consumption.
- Limits the amount of alcoholic beverages that may be sold or delivered for off-premises consumption to 32 ounces.
- Requires alcoholic beverages prepared and sealed by the licensee to be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and that a dated receipt of the beverage and meal must be provided and attached to the container.
- Requires alcoholic beverages prepared and sealed by the licensee and transported by motor vehicle to be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.
- Requires malt beverage containers to comply with the size, labeling, and filling requirements of s. 563.06, F.S., except that such containers may not exceed 32 ounces.
- Requires SRX license to comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.
- Prohibits the sale of manufacturer-sealed containers of distilled spirits.
- Provides that an alcoholic beverage that is sealed by a licensee or employee is not an open container under the prohibition against an open container of alcoholic beverages in a motor vehicle under s. 316.1936, F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 277 and 278

insert:

Section 4. Section 564.05, Florida Statutes, is repealed.

Section 5. Section 564.055, Florida Statutes, is repealed.

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

And the title is amended as follows:

Between lines 14 and 15

insert:



719554

12 repealing ss. 564.05 and 564.055, F.S., relating to
13 limitations on the sizes of wine containers and cider
14 containers, respectively;

By the Committee on Regulated Industries; and Senator Bradley

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A bill to be entitled

An act relating to the Beverage Law; amending s. 561.20, F.S.; authorizing certain food service establishments to sell or deliver certain alcoholic beverages for off-premises consumption under certain circumstances; creating s. 561.575, F.S.; providing requirements for such establishments to sell alcoholic beverages for off-premises consumption; requiring that such alcoholic beverages be transported in a specified manner; providing construction; amending s. 316.1936, F.S.; specifying that certain alcoholic beverages sold by such establishments are not open containers for the purposes of the prohibition on possessing open containers of alcoholic beverages in vehicles; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure,

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as defined in s. 561.01(21), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(21), in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State

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Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter. A licensee under this subparagraph may sell or deliver alcoholic beverages for off-premises consumption pursuant to s. 561.575. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store except as provided in s. 561.575 and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic

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beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic

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117 beverage purchases and sales, nonalcoholic beverage purchases
 118 and sales, and any other records required by the department by
 119 rule to demonstrate compliance with the requirements of this
 120 subparagraph. Notwithstanding any law to the contrary, any
 121 vendor licensed under s. 565.02(1) subject to the limitation
 122 imposed in subsection (1), may, without any additional licensure
 123 under this subparagraph, serve or sell alcoholic beverages for
 124 consumption on the premises of a catered event at which prepared
 125 food is provided by a caterer licensed under chapter 509. If a
 126 licensee under this subparagraph also possesses any other
 127 license under the Beverage Law, the license issued under this
 128 subparagraph shall not authorize the holder to conduct
 129 activities on the premises to which the other license or
 130 licenses apply that would otherwise be prohibited by the terms
 131 of that license or the Beverage Law. Nothing in this section
 132 shall permit the licensee to conduct activities that are
 133 otherwise prohibited by the Beverage Law or local law. The
 134 Division of Alcoholic Beverages and Tobacco is hereby authorized
 135 to adopt rules to administer the license created in this
 136 subparagraph, to include rules governing licensure,
 137 recordkeeping, and enforcement. The first \$300,000 in fees
 138 collected by the division each fiscal year pursuant to this
 139 subparagraph shall be deposited in the Department of Children
 140 and Families' Operations and Maintenance Trust Fund to be used
 141 only for alcohol and drug abuse education, treatment, and
 142 prevention programs. The remainder of the fees collected shall
 143 be deposited into the Hotel and Restaurant Trust Fund created
 144 pursuant to s. 509.072; or

145 6. A culinary education program as defined in s.

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146 381.0072(2) which is licensed as a public food service
 147 establishment by the Division of Hotels and Restaurants.

148 a. This special license shall allow the sale and
 149 consumption of alcoholic beverages on the licensed premises of
 150 the culinary education program. The culinary education program
 151 shall specify designated areas in the facility where the
 152 alcoholic beverages may be consumed at the time of application.
 153 Alcoholic beverages sold for consumption on the premises may be
 154 consumed only in areas designated pursuant to s. 561.01(11) and
 155 may not be removed from the designated area. Such license shall
 156 be applicable only in and for designated areas used by the
 157 culinary education program.

158 b. If the culinary education program provides catering
 159 services, this special license shall also allow the sale and
 160 consumption of alcoholic beverages on the premises of a catered
 161 event at which the licensee is also providing prepared food. A
 162 culinary education program that provides catering services is
 163 not required to derive at least 51 percent of its gross revenue
 164 from the sale of food and nonalcoholic beverages.
 165 Notwithstanding any law to the contrary, a licensee that
 166 provides catering services under this sub-subparagraph shall
 167 prominently display its beverage license at any catered event at
 168 which the caterer is selling or serving alcoholic beverages.
 169 Regardless of the county or counties in which the licensee
 170 operates, a licensee under this sub-subparagraph shall pay the
 171 annual state license tax set forth in s. 565.02(1)(b). A
 172 licensee under this sub-subparagraph must maintain for a period
 173 of 3 years all records required by the department by rule to
 174 demonstrate compliance with the requirements of this sub-

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subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota

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limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 2. Section 561.575, Florida Statutes, is created to read:

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233 561.575 Food service establishments; off-premises
 234 consumption of alcoholic beverages.-
 235 (1) Notwithstanding any other law, a public food service
 236 establishment licensed under s. 561.20(2)(a)4. may sell
 237 manufacturer-sealed containers of wine, containers of malt
 238 beverages, or any alcoholic beverage drink prepared by the
 239 vendor, including any wine-based and liquor-based drinks, sold
 240 in containers sealed by the licensee or its employees for
 241 consumption off of the licensed premises if accompanied by the
 242 sale of food within the same order. The container for any
 243 alcoholic beverage sold or delivered for consumption off the
 244 premises pursuant to this section may not exceed 32 ounces. An
 245 alcoholic beverage drink prepared by the vendor and sold or
 246 delivered for consumption off the premises must be securely
 247 sealed by the licensee or its employees with an unbroken seal
 248 that prevents the beverage from being immediately consumed
 249 before removal from the premises. Such alcoholic beverage also
 250 must be placed in a bag or other container that is secured in
 251 such a manner that it is visibly apparent if the container has
 252 been subsequently opened or tampered with, and a dated receipt
 253 for the alcoholic beverage and meal must be provided by the
 254 licensee and attached to the sealed container. If transported in
 255 a motor vehicle, an alcoholic beverage that is not in a
 256 container sealed by the manufacturer must be placed in a locked
 257 compartment, a locked trunk, or the area behind the last upright
 258 seat of a motor vehicle.
 259 (2) Any sale or delivery of a malt beverage under this
 260 section must comply with the container size, labeling, and
 261 filling requirements under s. 563.06, except that such container

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262 may not exceed 32 ounces.
 263 (3) Any delivery of an alcoholic beverage under this
 264 section must comply with s. 561.57.
 265 (4) This section may not be construed to authorize public
 266 food service establishments licensed under s. 561.20(2)(a)4. to
 267 sell as package manufacturer-sealed containers of distilled
 268 spirits.
 269 Section 3. Subsection (9) of section 316.1936, Florida
 270 Statutes, is amended to read:
 271 316.1936 Possession of open containers of alcoholic
 272 beverages in vehicles prohibited; penalties.-
 273 (9) A bottle of wine that has been resealed and is
 274 transported pursuant to s. 564.09 or an alcoholic beverage that
 275 has been sealed by a licensee or the employee of a licensee and
 276 is transported pursuant to s. 561.575 is not an open container
 277 under ~~the provisions of~~ this section.
 278 Section 4. This act shall take effect July 1, 2021.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 228

INTRODUCER: Judiciary Committee, Commerce and Tourism Committee, and Senator Bradley

SUBJECT: Notaries Public

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay	CM	Fav/CS
2. Ravelo	Cibula	JU	Fav/CS
3. Harmsen	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 228 provides updates to the recently created process for online notarizations in ch. 117, F.S. In part, the bill:

- Institutes a self-certification requirement for remote online notarization service providers to ensure their eligibility to assist with the provision of notary services;
- Transfers specific duties from online notaries public to their remote online notarization service providers;
- Requires the Department of State to publish information about active and inactive online notaries public and remote online notarization service providers;
- Permits online notaries to rely on a foreign passport of an individual who is currently outside of the borders of the United States to perform an online notarization;
- Implements privacy requirements for personally identifying information given during an online notarization;
- Provides several clarifications and technical updates to the process of online notarizations provided for in ch. 117, F.S.; and
- Allows for remote swearing in of witnesses for court proceedings and attorney admission to The Florida Bar.

The bill takes effect on January 1, 2022.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 117, F.S., to authorize notaries public, civil-law notaries, and commissioners of deeds to register as online notaries to provide online notary services through two-way, remote audio-visual communication technology, similar to skype and zoom.¹

Florida is one of 29 states that permits remote online notarization (RON).² Virginia was the first to enact a RON law in 2012,³ and the proposed SECURE Act in Congress would permit all current notaries public appointed in the U.S. to perform RON in connection with interstate transactions.⁴ Additionally, RON has been expanded through federal agency guidance, state emergency powers, and specific court administrative orders to allow necessary business to continue during the COVID-19 pandemic.⁵ The Florida Supreme Court issued an administrative order that permits notaries and all other parties qualified to administer oaths in Florida to swear a witness remotely by audio-video communication technology from a location within the State of Florida.⁶

Online Notaries Public in Florida

The Department of State (department) governs the registration of online notaries public (online notaries), and as a prerequisite, requires registrants to:⁷

- Be commissioned or appointed as a notary public pursuant to ch. 117, F.S., a civil-law notary under ch. 118, F.S., or a commissioner of deeds under part IV of ch. 721, F.S.;
- Complete training that covers the duties, obligations, and technology requirements for serving as an online notary;
- Pay a \$10 notary public registration fee;
- Have a current contract with a RON service provider whose technologies and credentialing processes satisfy the statutory minimum requirements; and

¹ Chapter 2019-71, L.O.F. CS/CS/HB 409 (2019) was signed into law on June 7, 2019, and took effect on January 1, 2020.

² M.H.K. Tank, D. Whitaker, E.S.M. Caires, A. Grant, *Coronavirus: Federal and State Governments Work Quickly to Enable Remote Online Notarization to Meet Global Crisis*, DLA Piper Publications (Jan. 4, 2021), available at https://www.dlapiper.com/en/us/insights/publications/2020/03/coronavirus-federal-and-state-governments-work-quickly-to-enable-remote-online-notarization/#:~:text=Currently%2C%20there%20are%2028%20states,Dakota*%2C%20Tennessee%2C%20Texas%2C (last visited Jan. 25, 2021).

³ Lauren Silverman, *Notaries are Starting to Put Down the Stamp and Pick Up a Webcam*, National Public Radio, All Tech Considered (June 12, 2017), <https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-put-down-the-stamp-and-pick-up-a-webcam> (last visited Jan. 25, 2021). See Office of the Secretary of the Commonwealth of Virginia, Notary Public Division, *A Handbook for Virginia Notary Publics*, <https://www.governor.virginia.gov/media/governorvirginiagov/secretary-of-administration/Virginia-Remote-Online-Notarization-Guidance.pdf> (last visited Jan. 25, 2021).

⁴ Tank, et al. *supra* note 2. Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020, S.B. 3533, 116th Cong. (2020), available at <https://www.congress.gov/bills/116/congress/senate/bills/3533/text?q=%7B%22search%22%3A%5B%223533%22%5D%7D&r=4&s=2> (last visited Jan. 25, 2021).

⁵ Tank, et al. *supra* note 2.

⁶ Florida Supreme Court, *In Re: COVID-19 Emergency Procedures for the Administering of Oaths via Remote Audio-Video Communication Equipment*, Fla. Admin. Order No. AOSC20-16, (Mar. 18, 2020) available at <https://www.floridasupremecourt.org/content/download/632105/file/AOSC20-16.pdf> (last visited Jan. 25, 2021).

⁷ Section 117.225, F.S.; Fla. Admin. Code, R. 1N-7.001 (2020). See also, Department of State, *Remote Online Notary Public*, <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/> (last visited Jan. 25, 2021).

- Maintain a \$25,000 bond and a current errors and omissions insurance policy.

As of January 2021, 6,278 online notaries have registered with the department.⁸

An online notary can administer oaths or affirmations, take acknowledgements, attest to photocopies, verify vehicle identification numbers, and certify the contents of a safe-deposit box. The online notary must perform the notarial service from Florida, but the individual who seeks the notarial service (principal) and any witnesses can login to the RON platform from anywhere in the world. An online notary may charge a fee of no more than \$25 for performing a notarial service.⁹

Online notaries differ from notaries public in that they may use audio-visual technology to notarize a document for a principal who is in a different physical location; a notary public must be physically present with the principal to notarize a document. Additionally, although notaries public can solemnize marriages, an online notary cannot.¹⁰

Remote Online Notarization (RON) Service Providers

A RON service provider is a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries to facilitate their performance of online notarizations.¹¹ More concretely, a RON service provider hosts a platform that provides the audiovisual technology that allows the notary and signer to see, hear and communicate with each other over the internet.¹²

Online Notarization

To perform an online notarization service, an online notary must first determine whether the principal is located outside of Florida at the time of notarization. If so, the online notary must confirm that the principal understands that the notarization will occur according to Florida law.

Next, the online notary must confirm the principal's identity.¹³ An online notary may do so by documenting that he or she personally knows the principal, or, if the notary does not know the principal, by documenting all of the following:

- The principal's remote presentation of a government-issued identification;¹⁴

⁸ E-mail from Department of State staff (Jan. 13, 2021) (on file with the Senate Committee on Commerce and Tourism).

⁹ Section 117.275, F.S.

¹⁰ Section 117.209(1), F.S.

¹¹ Section 117.201(14), F.S.

¹² David Thun, The National Notary Magazine, *The State of Remote Online Notarization* (Nov. 19, 2019), available at <https://www.nationalnotary.org/notary-bulletin/blog/2019/11/the-state-of-remote-online-notarization> (last visited Jan. 25, 2021).

¹³ Section 117.265(4), F.S.

¹⁴ Section 117.05(5)(b)2 lists acceptable identification as: Florida identification card or driver license; a U.S. passport; a passport issued by a foreign government if it is stamped by the U.S. Bureau of Citizenship and Immigration Services; a driver license of id card issued by a state other than Florida, or a territory in the U.S., Canada, or Mexico; an id card issued by the U.S. armed forces; a veteran health id card; an inmate id card issued by if the principal is still in the Florida Department of Correction's or U.S. Department of Justice's custody; an id card issued by the U.S. Bureau of Citizenship and Immigration Services; or, where all of the inmate's identifications were confiscated upon his or her confinement—a sworn, written statement from a law enforcement officer that states that the inmate is the person whose signature is to be notarized.

- The notary's credential analysis¹⁵ of the identification to ensure its validity; and
- The notary's identity proofing¹⁶ of the principal, wherein a third-party provides knowledge-based authentication questions that must be correctly answered by the principal in a limited amount of time.

If the notary cannot document these steps, then he or she is not permitted to perform the online notarization.

Should the online notarization also require a witness, the online notary must confirm the witness' identity.¹⁷ If the witness is physically present with the principal, he or she can confirm his or her identity by stating his or her name and current address on the recording. If the witness is connected via audio-visual communication technology (outside of the principal's presence), the online notary must confirm the witness' identity by presentation of government-issued identification and performance of a credential analysis and identity proofing, as required for the principal.

After the notary succeeds in confirming the pertinent identities, the notary may witness the principal electronically sign the document. Then the notary adds his or her unique electronic signature and digital notary seal using tamper-evident technology that would document any subsequent change to the document.¹⁸

For all online notarizations, an online notary must:

- Make and maintain a recording of the audio-visual component (video) of the notarization, including the credential analysis and identity proofing he or she performed, if any;¹⁹ and
- Create an entry in his or her electronic journal of notarizations that notes specific information about the notarization, including types of identification used and the names and addresses of all parties involved.²⁰

The online notary must maintain both the electronic journal and the recordings for at least 10 years after the notarization. An online notary, his or her estate, or guardian may transfer these documents to a secure repository should he or she become incapable of maintaining them before the 10 years have elapsed.²¹

III. Effect of Proposed Changes:

Section 117.021, F.S., currently grants a notary public the right to perform notarial acts, with respect to an electronic record, with whatever form of technology he or she chooses. **Section 1** amends s. 117.021, F.S., to accommodate an employer's requirement that a notary public who performs notarial acts as a part of his or her job use technology chosen by the employer within the scope of employment or as provided by a contract. This allows a business to standardize its

¹⁵ Section 117.201(3), F.S. *See also*, s. 117.295(3)(b), F.S.

¹⁶ Section 117.201(7), F.S. *See also*, s. 117.295(3)(a), F.S.

¹⁷ Section 117.285, F.S.

¹⁸ Section 117.255, F.S. *See also*, Silverman *supra* note 3.

¹⁹ Section 117.245(2), F.S.

²⁰ Section 117.245(1), F.S.

²¹ Section 117.245(4), F.S.

services and contracts. The notary public's right to use his or her preferred technology outside of the scope of any contract or employment is not changed by this amendment.

Section 2 amends s. 117.05, F.S., to make the language of the fee ceiling for a single notarial act consistent with the language regarding the fee ceiling for an online notarial act in s. 117.275, F.S. This is a technical amendment.

Section 3 amends s. 117.201, F.S., to permit an online notary to use a passport issued by a foreign government that *does not* include an immigration stamp from the U.S. Bureau of Citizenship and Immigration services to validate a principal's identity. This accommodates online notarizations where the principal has not entered the United States, and appears via audio-visual technology for the notarization.

Section 4 amends s. 117.225, F.S., regarding requirements for a notary public, civil-law notary, or commissioner of deeds to register as an online notary public. The bill requires these registrants to provide the Department of State with their notary commission or appointment number as opposed to the current broad standard of "proof" of their commission. This change eliminates the possible need for rule-making regarding this section.

Section 5 amends s. 117.231, F.S., to allow for a notary public to use audio-visual technology to swear in individuals who are testifying during any court proceeding, deposition, arbitration, or public hearing when they are outside the physical presence of the notary. When the individual is located outside of the state, consent must be obtained to take his or her oath using audio-visual technology.

The bill also allows for a notary to administer the oath of admission for The Florida Bar using audio-visual communication for an individual outside the physical presence of the notary.

A notary is not required to be an online notary or use an RON service provider when performing notarial acts under this section.

Sections 6 and 7 amend ss. 117.245 and 117.255, F.S., to transfer the duty to maintain a recording of the audio-video communication in which an online notarization was performed from the online notary to the RON service provider used for the services. The online notary, however, is still required to ensure that that recording includes:

- The appearance of the principal and any witness before the online notary public;
- Confirmation of the identity of the principle and any witness;
- A general description or identification of the records to be signed;
- Recitation by the online notary public of information sufficient to identify the notarial act;
- A declaration by the principal that his or her signature on the record is knowingly and voluntarily made; and
- Any of the actions and spoken words of the principle, notary public, and any required witnesses during the entire online notarization.

The RON service provider must keep a copy of the recording for at least 10 years, but may delegate this duty by contract to a secure repository provided that the Department of State is

notified of such delegation of retention duties within 30 days. The effective date of such a delegation must be reported to the Department of State.

The bill also extends the duty to provide access to the RON service provider's stored recordings, or a copy thereof, to specific parties upon their request. The bill permits the RON service provider to charge a fee of no more than \$20 for producing a copy of the recording, and requires disclosure of the fee in a timely manner. The bill clarifies that certain parties are exempt from the \$20 production fee during the 10 year period that the audio-video recording is retained by the RON service provider.

Section 6 is also reorganized to clarify an online notary's duty to note in his or her electronic journal that a principal's government-issued identification satisfied the credential analysis only when the online notary relied on a principal's identification to prove his or her identity, not in cases where the online notary personally knew the principal.

Section 8 amends s. 117.265, F.S., to offer an accommodation to employers of online notaries to allow them to specify which RON service provider the online notary may use in his or her capacity as an employee, similar to the change made for notary public employers in section 1 of the bill. This amendment also reiterates that an online notary public may choose to use any RON service provider outside of his or her employment relationship.

Section 9 amends s. 117.275, F.S., to specify that the \$25 fee ceiling for an online notarial act does not govern fees charged by a RON service provider, and clarifies that online notarization services are not considered closing services, as defined in s. 627.7711, F.S., regarding title insurance.

Section 10 amends s. 117.295, F.S., to create a process whereby RON service providers must certify with the department that they are eligible, pursuant to statute and rule, to provide audio-visual communication and related processes for assistance in the provision of online notarization services. These self-certifications remain active for a period of one year from the date of filing.

While these eligibility requirements exist in current statute, the duty to confirm the RON service provider's eligibility rests with the online notary at the time of his or her registration. **Section 4** deletes the online notary's duty to confirm a RON service provider's eligibility in s. 117.225(5), F.S., thereby completing the transfer of RON service provider eligibility certification from online notary to RON service provider.

Section 10 further amends s. 117.295, F.S., to require that the department publish on its website both a list of each online notary public, his or her past and present RON service providers, and the effective dates during which the online notary used the RON service provider; and a list of all RON service providers who have an active self-certification with the department. The bill requires the department to have the above information from January 1, 2022, and thereafter, and does not apply retroactively. Thus, any RON service providers used in the past by an online notary public, for example, would not need to be published on the website unless it is used again by the online notary public on or after January 1, 2022.

The bill deletes the department's emergency rulemaking, but retains the department's rulemaking authority intact to permit further rulemaking to implement remote online notarizations in Florida.

Lastly, section 10 implements privacy standards that prohibit a RON service provider from using, selling, or offering to sell or transfer for use or sale any personally identifying information that it obtained under part II of ch. 117, F.S., from a principal, witness, or person named in a record that was presented for notarization, except in cases where provision of the information is necessary to:

- Facilitate the notarial act;
- Administer or process a record provided by or on behalf of a principal or the transaction for which the record was provided;
- Comply with federal, state, or local law, or to comply with a lawful subpoena or court order;
- To monitor and improve the audio-video communication technology and related processes, services, software, data storage, or other services offered by the RON service provide to the online notaries public for the purpose of directly facilitating their performance of online notarizations; or
- Engage in the sale, merger, transfer, or exchange of all or a portion of the RON service provider's business—if the transferee agrees to comply with the statutory privacy restrictions in this same provision of law.

Section 11 provides that the bill takes effect on January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill appears to codify language from a recent Florida Supreme Court Administrative Order which was executed in relation to the COVID-19 pandemic to allow for remote

administrations of oaths and swearing in of witnesses.²² The bill also allows a notary to issue the oath of admission to The Florida Bar remotely.

The Supreme Court has exclusive jurisdiction over the procedural rules of the Florida courts.²³ The Florida Evidence Code, for example, contains both procedural and substantive laws for the courts to apply. However, rules of that are procedural in nature, even if passed by the Legislature, must be approved by the Supreme Court. Occasionally, the Court has rejected legislative changes. In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that the application of the statute would go against long standing rules of evidence.²⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules.

The Court likewise has exclusive jurisdiction over attorney regulations and admission to the Florida Bar.²⁵ Thus, the Court may have the power to reject any oath of admission conducted remotely if it repeals or changes its Administrative Order.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

RON service providers may have to update terms and processes to implement the privacy restrictions in this bill.

C. Government Sector Impact:

The Department of State will be required to implement processes to publish and maintain lists of RON service providers and online notaries. It currently maintains a list of notaries public, their commission number, and their commission's expiration date—but does not currently indicate whether a notary public is registered as an online notary public.²⁶ The department states that this duty to publish additional information regarding online notaries public and RON service providers will “have a significant impact on its current technology systems. ... [and] will require additional funding and may require additional deliverables and/or timeframe be added to the COTS [commercial-off-the-shelf business registry system] contract in progress.” The department therefore “request[s] additional

²² Florida Supreme Court, *Supra* note 6.

²³ Art V, s. 15, Fla. Const.

²⁴ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses' hearsay exception of the requirement that the witness be unavailable.

²⁵ Art V, s. 2(a), Fla. Const.

²⁶ Department of State, *Approved Notaries*, <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/approved-notaries/> (last visited Jan. 25, 2021).

funding and FTE positions in order to perform the additional processing duties, responsibilities and services specified in the bill.”²⁷

The department also “suggests a fee for the RON service provider to file the self-certification.”²⁸ It is unclear if the department suggests this fee to defray costs related to the publication of information required under the bill. Additionally, the department may have to adopt forms or rules to implement the certification of RON service providers.

The bill codifies language from a recent Florida Supreme Court Administrative Order which was adopted in relation to the COVID-19 pandemic to allow for remote swearing in of witnesses and newly admitted attorneys.²⁹ The Administrative Order may be rescinded by the Court at any time, possibly as soon as health guidelines make it feasible to allow daily in person court to resume. By codifying this language in statute, the bill may have a positive impact on courtroom efficiency by allowing remote swearing in to continue after the COVID-19 pandemic.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.021, 117.05, 117.201, 117.215, 117.225, 117.245, 117.255, 117.265, 117.275, and 117.295.

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 February 15, 2021:

- Revises the notary and online notary fee ceilings to be applicable “per notarial act” as opposed to “per signature”;
- Allows a notary to swear in witnesses and newly admitted attorneys via audio-video technology;
- Allows a remote online notary to delegate his or her duty to maintain records of online notarization sessions to a secure repository in a similar method as an online notary currently can with their electronic journal;

²⁷ Department of State, *Senate Bill 228 Agency Analysis*, p. 5 (Jan. 7, 2021) (on file with the Senate Committee on Commerce and Tourism).

²⁸ *Id.*

²⁹ Florida Supreme Court, *Supra* note 6.

- Clarifies that while a remote online notary service provider is responsible for maintaining the records of the notarization session, the notary himself or herself are actually responsible for ensuring that the notarization is compliant;
- Clarifies when a remote online service provider may use, sell, or transfer the personal information obtained as part of a notarial act; and
- Delays the effective to January 1, 2022 from October 1, 2021.

CS by Commerce and Tourism on January 25, 2021:

- Deletes “interim and emergency” rulemaking to implement provisions of the bill, but leaves the department’s general rulemaking authority intact;
- Requires RON service providers to self-certify each year instead of every two years; and
- Deletes the requirement that a RON service provider submit a new self-certification after each amendment to ch. 117, F.S., and any rules adopted pursuant thereto.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Bradley) recommended the following:

Senate Amendment

Delete lines 366 - 383
and insert:
delegated his or her duties pursuant to s. 117.245(4) from
January 1, 2022, and thereafter, and the effective dates of that
delegation.

(4) (a) A RON service provider must file a self-
certification with the Department of State, on a form adopted by
department rule, confirming that its audio-video communication
technology and related processes, services, software, data



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12 storage, or other services provided to online notaries public
13 for the purpose of directly facilitating their performance of
14 online notarizations satisfy the requirements of this chapter
15 and any rules adopted by the Department of State pursuant to
16 this section. Each certification shall remain active for a
17 period of 1 year from the date of filing. The Department of
18 State must publish on its website a list of each RON service
19 provider that has filed a self-certification, the date of filing
20 of the self-certification, any secure repositories to which the
21 RON service provider may have delegated its duties pursuant to
22 s. 117.245(4) from January 1, 2022, and thereafter, and the

By the Committees on Judiciary; and Commerce and Tourism; and
Senators Bradley and Burgess

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1 A bill to be entitled
2 An act relating to notaries public; amending s.
3 117.021, F.S.; clarifying that a notary public is
4 entitled to select particular technology in performing
5 a notarial act with respect to an electronic record;
6 authorizing a notary public's contract or employer to
7 require the use of a particular technology in
8 performing a notarial act with respect to an
9 electronic record; amending s. 117.05, F.S.; revising
10 limitations on notary public fees; amending s.
11 117.201, F.S.; revising definitions; amending s.
12 117.225, F.S.; revising certain registration
13 requirements for online notaries public; creating s.
14 117.231, F.S.; authorizing notaries public to remotely
15 swear in witnesses using audio-video communication
16 technology; authorizing notaries public to remotely
17 swear in new attorneys admitted to The Florida Bar
18 using audio-video communication technology; amending
19 s. 117.245, F.S.; modifying requirements for entries
20 in the electronic journal maintained by an online
21 notary public; requiring a remote online notarization
22 service provider, rather than an online notary public,
23 to retain audio-video communication recordings of
24 online notarizations; authorizing a RON service
25 provider to delegate this duty to a secure repository
26 under certain conditions; conforming provisions to
27 changes made by the act; amending s. 117.255, F.S.;
28 revising provisions governing access to audio-video
29 communication recordings to conform to changes made by

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30 the act; authorizing a remote online notarization
31 service provider to charge a fee for access to such
32 recordings, subject to specified limitations; amending
33 s. 117.265, F.S.; clarifying that an online notary
34 public is entitled to select his or her remote online
35 notarization service provider; authorizing a notary
36 public's contract or employer to require the use of a
37 particular remote online notarization service provider
38 in performing online notarizations; requiring an
39 online notary public to notify the Department of State
40 of the effective date of a change in the remote online
41 notarization service provider used; amending s.
42 117.275, F.S.; clarifying limitations on fees charged
43 for online notarizations; amending s. 117.295, F.S.;
44 requiring the department to publish on its website a
45 list containing certain information on online notaries
46 public; requiring a remote online notarization service
47 provider to file a self-certification with the
48 department; specifying the duration of a self-
49 certification; requiring the department to publish on
50 its website a list containing certain information on
51 self-certified remote online notarization service
52 providers; prohibiting a remote online notarization
53 service provider from using, selling, or offering to
54 sell or transfer personal information obtained in the
55 course of performing online notarizations; providing
56 exceptions; providing an effective date.

57
58 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsection (4) of section 117.021, Florida Statutes, is amended to read:

117.021 Electronic notarization.—

(4) A notary public performing a notarial act with respect to an electronic record shall select the technology to be used for such notarial act. A person may not require ~~the a~~-notary public to use a particular ~~perform a notarial act with respect to an electronic record with a form of~~ technology; however, if the notary public is required by his or her contract or employer to perform notarial acts with respect to electronic records, the contract or employer may require the use of a particular technology for those notarial acts ~~that the notary public has not selected to use.~~

Section 2. Paragraph (a) of subsection (2) of section 117.05, Florida Statutes, is amended to read:

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

(2) (a) The fee of a notary public may not exceed \$10 for any one notarial act under this part, except as provided in s. 117.045 or s. 117.275.

Section 3. Subsections (6) and (14) of section 117.201, Florida Statutes, are amended to read:

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

(6) "Government-issued identification credential" means any approved credential for verifying identity under s. 117.05(5)(b)2. However, for an online notarization of a principal not located within the United States, a passport

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issued by a foreign government not including the stamp of the United States Bureau of Citizenship and Immigration Services may be used as a government-issued identification credential to verify the principal's identity.

(14) "Remote Online Notarization service provider" or "RON service provider" means a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries public for the purpose of directly facilitating their performance of online notarizations, in compliance with the requirements of this chapter and any rules adopted by the Department of State pursuant to s. 117.295.

Section 4. Subsections (1) and (5) of section 117.225, Florida Statutes, are amended to read:

117.225 Registration; qualifications.—A notary public, a civil-law notary appointed under chapter 118, or a commissioner of deeds appointed under part IV of chapter 721 may complete registration as an online notary public with the Department of State by:

(1) Holding a current commission as a notary public under part I of this chapter, an appointment as a civil-law notary under chapter 118, or an appointment as a commissioner of deeds under part IV of chapter 721, and submitting his or her commission or a copy of such commission or proof of such appointment number ~~with his or her registration.~~

(5) Identifying the RON service provider or providers whose audio-video communication technology and processes for credential analysis and identity-proofing technologies the registrant intends to use for online notarizations, ~~and~~

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~~confirming that such technology and processes satisfy the requirements of this chapter and any rules adopted by the Department of State pursuant to s. 117.295.~~

Section 5. Section 117.231, Florida Statutes, is created to read:

117.231 Remote administration of certain oaths.-

(1) When taking the oath of an individual who is testifying at any court proceeding, deposition, arbitration, or public hearing and who is outside of the physical presence of the notary public, the notary public may fulfill the requirements of s. 117.05 using audio-video communication technology.

(2) When taking an oath of admission to The Florida Bar from an individual who is outside of the physical presence of the notary public, the notary public may fulfill the requirements of s. 117.05 using audio-video communication technology.

(3) If an individual is located outside of this state at the time the notary public is to take the individual's oath under this section, consent from the individual must be obtained to take his or her oath using audio-video communication technology pursuant to this section.

(4) When taking an oath under this section, the notary public is not required to be an online notary public or to use a RON service provider.

Section 6. Subsections (1), (2), (4), and (5) of section 117.245, Florida Statutes, are amended to read:

117.245 Electronic journal of online notarizations.-

(1) An online notary public shall keep one or more secure electronic journals of online notarizations performed by the

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online notary public. For each online notarization, the electronic journal entry must contain all of the following:

(a) The date and time of the notarization.

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

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

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

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

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

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

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

~~c.(f)~~ An indication that the principal satisfactorily passed the identity proofing.

~~(g) An indication that the government-issued identification credential satisfied the credential analysis.~~

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

(2) The RON service provider ~~online notary public~~ shall retain an uninterrupted and unedited copy of the recording of the audio-video communication in which an online notarization is performed. The online notary public shall ensure that the recording includes ~~must include~~ all of the following:

(a) Appearance by the principal and any witness before the online notary public.

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175 (b) Confirmation of the identity of the principal and any
 176 witness.

177 (c) A general description or identification of the records
 178 to be signed.

179 (d) At the commencement of the recording, recitation by the
 180 online notary public of information sufficient to identify the
 181 notarial act.

182 (e) A declaration by the principal that his or her
 183 signature on the record is knowingly and voluntarily made.

184 (f) All of the actions and spoken words of the principal,
 185 notary public, and any required witness during the entire online
 186 notarization, including the signing of any records before the
 187 online notary public.

188 (4) The electronic journal required under subsection (1)
 189 and the recordings of audio-video communications required under
 190 subsection (2) shall be maintained for at least 10 years after
 191 the date of the notarial act. However, a full copy of the
 192 recording of the audio-video communication required under
 193 subsection (2) relating to an online notarization session that
 194 involves the signing of an electronic will must be maintained by
 195 a qualified custodian in accordance with chapters 731 and 732.
 196 The Department of State maintains jurisdiction over the
 197 electronic journal and audio-video communication recordings to
 198 investigate notarial misconduct for a period of 10 years after
 199 the date of the notarial act. The online notary public, a
 200 guardian of an incapacitated online notary public, or the
 201 personal representative of a deceased online notary public may,
 202 by contract with a secure repository in accordance with any
 203 rules established under this chapter, delegate to the repository

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204 the online notary public's duty to retain the electronic journal
 205 ~~and the required recordings of audio-video communications,~~
 206 provided that the Department of State is notified of such
 207 delegation of retention duties to the repository within 30 days
 208 thereafter, including the effective date of the delegation and
 209 the address and contact information for the repository. If an
 210 online notary public delegates to a secure repository under this
 211 section, the online notary public shall make an entry in his or
 212 her electronic journal identifying such repository, and provide
 213 notice to the Department of State as required in this
 214 subsection. A RON service provider may, by contract with a
 215 secure repository in accordance with any rules established under
 216 this chapter, delegate to the repository the RON service
 217 provider's duty to retain the required recordings of audio-video
 218 communications, provided that the Department of State is
 219 notified of such delegation of retention duties to the
 220 repository within 30 days thereafter, including the effective
 221 date of the delegation and the address and contact information
 222 for the repository. During any delegation under this subsection,
 223 the secure repository shall fulfill the responsibilities of the
 224 online notary public or RON service provider to provide copies
 225 or access under s. 117.255(2) and (3).

226 (5) An omitted or incomplete entry in the electronic
 227 journal does not impair the validity of the notarial act or of
 228 the electronic record which was notarized, but may be introduced
 229 as evidence to establish violations of this chapter; as evidence
 230 of possible fraud, forgery, impersonation, duress, incapacity,
 231 undue influence, minority, illegality, or unconscionability; or
 232 for other evidentiary purposes. However, if the recording of the

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audio-video communication required under subsection (2) relating to the online notarization of the execution of an electronic will cannot be produced by the RON service provider, the online notary public, or the qualified custodian, the electronic will shall be treated as a lost or destroyed will subject to s. 733.207.

Section 7. Section 117.255, Florida Statutes, is amended to read:

117.255 Use of electronic journal, signature, and seal.—

(1) An online notary public shall:

(a) ~~(1)~~ Take reasonable steps to ensure that any registered device used to create an electronic seal is current and has not been revoked or terminated by the issuing or registering authority of the device.

(b) ~~(2)~~ Keep the electronic journal and electronic seal secure and under his or her sole control, which includes access protection using passwords or codes under control of the online notary public. The online notary public may not allow another person to use the online notary public's electronic journal, electronic signature, or electronic seal, other than a RON service provider or other authorized person providing services to an online notary public to facilitate performance of online notarizations.

(c) ~~(3)~~ Attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner that is capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident.

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(d) ~~(4)~~ Notify an appropriate law enforcement agency and the Department of State of any unauthorized use of or compromise to the security of the electronic journal, official electronic signature, or electronic seal within 7 days after discovery of such unauthorized use or compromise to security.

(2) ~~(5)~~ An online notary public shall provide ~~Make~~ electronic copies, ~~upon request~~, of the pertinent entries in the electronic journal, and a RON service provider shall provide access to the related audio-video communication recordings, or a copy thereof, to the following persons upon request:

(a) The parties to an electronic record notarized by the online notary public;

(b) The qualified custodian of an electronic will notarized by the online notary public;

(c) The title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public with regard to a real estate transaction;

~~(d) The online notary public's RON service provider whose services were used by the online notary public to notarize the electronic record;~~

~~(e)~~ Any person who is asked to accept a power of attorney that was notarized by the online notary public;

(e) ~~(f)~~ The Department of State pursuant to a notary misconduct investigation; ~~and~~

(f) ~~(g)~~ Any other persons pursuant to a subpoena, court order, law enforcement investigation, or other lawful inspection demand;

(g) With respect to audio-video communication recordings of an online notarization, the online notary public performing that

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291 notarization; and

292 (h) With respect to electronic copies of pertinent entries
 293 in the electronic journal, the RON service provider used for the
 294 online notarizations associated with those entries.

295 (3)(c) The online notary public may charge a fee not to
 296 exceed \$20 per transaction record for making and delivering
 297 electronic copies of a given series of related electronic
 298 records, and a RON service provider may charge a fee not to
 299 exceed \$20 for providing access to, or a copy of, the related
 300 audio-video communication records, except such copies or access
 301 must be provided without charge if requested by any of the
 302 following within the 10-year period specified in s. 117.245(4):

303 (a) A party to the electronic record;

304 (b) In a real estate transaction, the title agent,
 305 settlement agent, or title insurer who insured the electronic
 306 record or engaged the online notary public with regard to such
 307 transaction; ~~or~~

308 (c) The Department of State pursuant to an investigation
 309 relating to the official misconduct of an online notary public;

310 (d) The qualified custodian of an electronic will notarized
 311 by the online notary public;

312 (e) With respect to audio-video communication recordings of
 313 an online notarization, the online notary public performing that
 314 notarization; or

315 (f) With respect to electronic copies of a given series of
 316 related electronic records, the RON service provider used for
 317 the online notarization of those records.

318
 319 If the online notary public or RON service provider charges does

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320 ~~charge~~ a fee, the online notary public or RON service provider
 321 ~~must shall~~ disclose the amount of such fee to the requester
 322 before making the electronic copies or providing access to, or
 323 making a copy of, the requested audio-video communication
 324 recordings.

325 Section 8. Subsection (5) of section 117.265, Florida
 326 Statutes, is amended to read:

327 117.265 Online notarization procedures.—

328 (5)(a) An online notary public shall select the RON service
 329 provider to be used to perform an online notarization, and a
 330 person may not require the online notary public to use a
 331 particular RON service provider; however, if the online notary
 332 public is required by his or her contract or employer to perform
 333 online notarizations, the contract or employer may require the
 334 use of a particular RON service provider for those online
 335 notarizations.

336 (b) An online notary public may change his or her RON
 337 service provider or providers from time to time, but shall
 338 notify the Department of State of such change, and its effective
 339 date, within 30 days thereafter.

340 Section 9. Section 117.275, Florida Statutes, is amended to
 341 read:

342 117.275 Fees for online notarization.—An online notary
 343 public or the employer of such online notary public may charge a
 344 fee, not to exceed \$25, for performing an online notarial act
 345 ~~notarization~~ under this part. Fees for services other than
 346 notarial acts, including the services of a RON service provider,
 347 are not governed by this section. A RON service provider's
 348 services are also not considered closing services, as defined in

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s. 627.7711, and a fee for those services may be separately charged.

Section 10. Subsections (2) and (4) of section 117.295, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

117.295 Standards for electronic and online notarization; rulemaking authority.—

(2) ~~By January 1, 2020,~~ The Department of State shall:

(a) Adopt forms, processes, and ~~interim or emergency~~ rules necessary to accept applications from and register online notaries public pursuant to s. 117.225.

(b) Publish on its website a list containing each online notary public, the online notary public's RON service providers from January 1, 2022, and thereafter, the effective dates during which the online notary public used each RON service provider, as identified pursuant to ss. 117.225(5) and 117.265(5)(b), any secure repositories to which the online notary public may have delegated his or her duties pursuant to s. 117.225(4) from January 1, 2022, and thereafter, and the effective dates of that delegation.

(4)(a) A RON service provider must file a self-certification with the Department of State, on a form adopted by department rule, confirming that its audio-video communication technology and related processes, services, software, data storage, or other services provided to online notaries public for the purpose of directly facilitating their performance of online notarizations satisfy the requirements of this chapter and any rules adopted by the Department of State pursuant to this section. Each certification shall remain active for a

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period of 1 year from the date of filing. The Department of State must publish on its website a list of each RON service provider that has filed a self-certification, the date of filing of the self-certification, any secure repositories to which the RON service provider may have delegated its duties pursuant to s. 117.225(4) from January 1, 2022, and thereafter, and the effective dates of that delegation.

(b) A RON service provider is deemed to have satisfied tamper-evident technology requirements by use of technology that renders any subsequent change or modification to the electronic record evident.

(8) A RON service provider may not use, sell, or offer to sell or transfer to another person for use or sale any personal information obtained under this part which identifies a principal, a witness, or a person named in a record presented for online notarization, except:

(a) As necessary to facilitate performance of a notarial act;

(b) To administer or process a record provided by or on behalf of a principal or the transaction of which the record is a part;

(c) To detect fraud, identity theft, or other criminal activities;

(d) In accordance with this part and the rules adopted pursuant to this part or any other applicable federal, state, or local law, or to comply with a lawful subpoena or court order or a lawful request from a law enforcement or regulatory agency;

(e) To monitor and improve the audio-video communication technology and related processes, services, software, data

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407 storage, or other services offered by the RON service provider
408 to online notaries public for the purpose of directly
409 facilitating their performance of online notarizations.

410 (f) In connection with a proposed or actual sale, merger,
411 transfer, or exchange of all or a portion of a business or
412 operating unit of a RON service provider, or the dissolution,
413 insolvency, or cessation of operations of a business or
414 operating unit, if limited to such personal information held by
415 that business or unit and any transferee agrees to comply with
416 the restrictions set forth in this subsection.

417 Section 11. This act shall take effect January 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 286

INTRODUCER: Regulated Industries Committee and Senator Perry

SUBJECT: Fire Sprinklers

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.	Schrader	Knudson	BI	Favorable
3.	Kraemer	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 286, relating to fire sprinklers, revises the scope of fire protection system work for persons certified as a contractor by the Division of State Fire Marshal (Division) within the Department of Financial Services.

Under the bill, a Contractor I or a Contractor II as defined in ch. 633, F.S., relating to Fire Prevention and Control, is authorized to design new fire protection systems of 49 or fewer sprinklers. A Contractor I and II would also be allowed to design the alteration of an existing system regardless of the size of the system, if the alteration relocates or deletes 249 or fewer sprinklers. Such authorization is conditioned, however, on that occupancy and water demand, as defined in applicable codes, must be unchanged, and the occupancy hazard classification must be reduced or unchanged. The bill eliminates the authorization for a Contractor IV to similarly design or alter such fire protection systems.

The bill clarifies that a Contractor I, Contractor II, or Contractor IV is authorized to design a new fire protection system, or design the alteration of an existing fire sprinkler system, when the system meets a specified standard for installation in a one-family, two-family, or manufactured home.

The bill revises the work authorized to be undertaken by a person certified as a Contractor V. Under the bill, a Contractor V would be authorized to inspect underground piping for a water-based fire protection system only under the direction of a Contractor I or Contractor II. A

Contractor V may continue to fabricate, install, alter, repair, and service the underground piping for a water-based fire protection system.

The bill clarifies that fire protection systems include tanks providing water supply or pump fuel, and piping for such tanks.

The bill has no impact on state or local government.

The bill is effective July 1, 2021.

II. Present Situation:

Florida Fire Prevention Code

The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.¹ The State Fire Marshal adopts a new edition of the FFPC every three years.² When adopting a new edition of the FFPC, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.³ The 7th edition of the FFPC took effect on December 31, 2020.⁴

Current law requires local governments to enforce the FFPC and the Florida Building Code including permitting, inspecting, and approving the installation of a fire protection system.⁵ Owners of fire protection systems are responsible for the maintenance of their fire protection systems, and must contract with a certified fire protection system contractor to regularly inspect such systems.⁶

Fire Sprinkler Systems

A licensed fire protection engineer or architect, with fire protection design experience, may design any type of fire protection system.⁷ A fire protection system is “a system individually

¹ See generally Fla. Admin. Code Ch. 69A-60.

² Section 633.202, F.S. The State Fire Marshal maintains a list of local amendments to the FFPC, available at <https://www.myfloridacfo.com/Division/SFM/bfp/LocalAmendments.htm> (last visited Mar. 15, 2021).

³ *Id.* The NFPA shares information through more than 300 consensus codes and standards, research, training, education, outreach and advocacy, and by partnering with others. See the NFPA website, available at <https://www.nfpa.org/> (last visited Mar. 15, 2021).

⁴ See Florida Fire Prevention Code, available at [Florida Fire Prevention Code Page \(myfloridacfo.com\)](https://www.myfloridacfo.com/FloridaFirePreventionCodePage) (last visited Mar. 15, 2021).

⁵ See generally the Florida Building Code, part IV of ch. 553, F.S., and ch. 633, F.S., relating to Fire Prevention and Control; 10.1.2 and 10.1.3 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).

⁶ Section 633.312 (4), F.S.; see also 10.2.7 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1), which provides minimum inspection frequency requirements.

⁷ Section 633.102(3), F.S. As provided in s. 471.031, F.S., the title “fire protection engineer” may be used only by persons holding an active license as an engineer in Florida, unless exempt from licensing.

designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire.”⁸

The State Fire Marshal is also responsible for licensing and regulating fire system protection contractors in the state.⁹ In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, a person must be certified as a fire protection system contractor.

Fire protection systems are designed by licensed engineers and architects. Such systems include, but are not limited to:

- Water sprinkler and spray systems;
- Foam-water sprinkler and spray systems;
- Carbon dioxide, foam extinguishing, and dry chemical systems;
- Halon and other chemical systems used for fire protection;
- Overhead and underground fire mains;
- Fire hydrants and hydrant mains;
- Standpipes and hoses connected to sprinkler systems;
- Sprinkler tank heaters, air lines, and thermal systems; and
- Tanks and pumps connected to fire sprinkler systems.¹⁰

Fire Protection System Contractors

Fire protection system contractors may be certified under ch. 633, F.S., in five categories that have distinct areas of authorized work which may be undertaken by contractors certified in a particular category. In order to sit for the examination for certification as a contractor, a person must be 18 years of age, be of good moral character, and have the following respective experience:

- A Contractor I must have four years of proven experience while employed by a Contractor I, or a combination of equivalent education and experience in both water-based and chemical fire suppression systems.
- A Contractor II must have four years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in water-based fire suppression systems.
- A Contractor III must have four years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in chemical fire suppression systems.
- A Contractor IV must be licensed as a certified plumbing contractor under ch. 489, F.S., and successfully complete a training program acceptable to the State Fire Marshal of not less than 40 contact hours regarding the applicable installation standard used by the Contractor IV as described in NFPA 13D, “Standard for the Installation of Sprinkler Systems in One and Two-Family Dwellings and Manufactured Homes.”

⁸ Section 633.102(11), F.S.

⁹ Division of State Fire Marshal, *Regulatory Licensing*, <https://www.myfloridacfo.com/Division/SFM/BFP/RegulatoryLicensing/default.htm> (last visited Mar. 15, 2021).

¹⁰ Section 633.102(11), F.S.

- A Contractor V must have been licensed as a certified underground utility and excavation contractor or certified plumbing contractor pursuant to ch. 489, F.S., have verification by a certified utility contractor or certified plumbing contractor pursuant to ch. 489, F.S., that the applicant has four years' proven experience while employed by a certified underground utility and excavation contractor or certified plumbing contractor, or have a combination of education and experience equivalent to four years' proven experience while employed by a certified underground utility and excavation contractor or certified plumbing contractor.¹¹

The design of fire protection systems of 49 or fewer sprinklers, and the alteration of an existing fire sprinkler system, notwithstanding the size of the system, provided that no more than 49 sprinklers are relocated, added, or deleted,¹² may be undertaken by persons certified as a:

- Contractor I, who have the authority to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding pre-engineered systems;¹³
- Contractor II, who have the authority to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler and spray systems, foam-water sprinkler and spray systems, standpipes, and sprinkler risers, all piping integral to the system, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and connected tanks and pumps, excluding pre-engineered systems);¹⁴ or
- Contractor IV, who have the authority to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding pre-engineered systems, and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings.¹⁵

Under current law, a person certified as a Contractor V is limited to the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a water-based fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than one foot above the finished floor.¹⁶

One category of fire protection system contractors, Contractor III, does not engage in work involving fire sprinklers. Instead, a Contractor III is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding pre-engineered systems.¹⁷

III. Effect of Proposed Changes:

The bill revises the scope of fire protection system work for persons certified as a contractor by the Division.

¹¹ Section 633.318(3), F.S. *See also* Fla. Admin. Code R. 69A-46.010.

¹² Section 633.102(3), F.S.

¹³ Section 633.102(3)(a), F.S.

¹⁴ Section 633.102(3)(b), F.S.

¹⁵ Section 633.102(3)(d), F.S.

¹⁶ Section 633.102(3)(3), F.S.

¹⁷ *See s. 633.102(3)(c), F.S.*

The bill revises the work authorized to be undertaken by a person certified as a Contractor V. Under the bill, a Contractor V may only inspect, alter, repair, and service underground piping for a water-based fire protection system when under the direction of a Contractor I or Contractor II. The bill maintains current law allowing a Contractor V to fabricate, install, alter, repair, and service the underground piping for a water-based fire protection system from the point of service to one foot above the finished floor of a building.¹⁸

The bill also creates a new authorization for a Contractor I or a Contractor II to design the alteration of an existing system, if said alteration:

- Entails the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing system;
- Requires no change in occupancy, as defined in the Florida Building Code and the FFPC,¹⁹ and no change in water demand as defined in National Fire Protection Association Publication (NFPA) No. 13;²⁰ and
- The occupancy hazard classification, as defined in NFPA No. 13,²¹ is reduced or remains the same after the alteration.

The bill eliminates the authorization in current law for a Contractor IV to design fire protection systems of not more than 49 sprinklers, and to design the alteration of an existing fire sprinkler system when the alteration relocates, adds, or deletes not more than 49 sprinklers.

The bill clarifies that a Contractor I, Contractor II, or Contractor IV is authorized to design a new fire protection system, or design the alteration of an existing fire protection system, the scope of which complies with NFPA 13D, “Standard for the Installation of Sprinkler Systems in One and Two-Family Dwellings and Manufactured Homes,” as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers.

The bill amends the definition of “fire protection system” to include tanks providing water supply or pump fuel, including piping for such tanks. This would allow fire sprinkler contractors to install fuel supply pumping for fire pumps.

The bill is effective July 1, 2021.

¹⁸ Section 633.102(3)(e), F.S.

¹⁹ See International Code Counsel, *Florida Building Code* ch. 3, available at: <https://codes.iccsafe.org/content/FLBC2020P1/chapter-3-use-and-occupancy-classification> (last visited Mar. 15, 2021), and Division of State Fire Marshal, *Florida Fire Prevention Code* ch. 20, available at <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view> (last visited Mar. 15, 2021).

²⁰ NFPA 13 is titled “Standard for the Installation of Sprinkler Systems” and is available for download here: <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=13> (last visited Mar. 15, 2021, registration required).

²¹ See NFPA, *Step 1 How Much Water is Needed*, available at https://www.nfpa.org/assets/gallery/firewise/operationWater/step1_3.htm (last visited Mar. 15, 2021), indicating an occupancy hazard classification is calculated as part of determining the minimum water needed to fight a structural fire. No hazard classification is assigned when a building has a properly installed automatic sprinkler system.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The bill authorizes persons certified as a Contractor I or Contractor II to design the alteration of an existing system regardless of the size of the system, if the alteration relocates or delete 249 or fewer sprinklers. The authorization to do this type of work is expanded for persons certified as a Contractor I or Contractor II, which may impact others who have previously undertaken such design work, such as engineers and architects.

Under the bill, persons certified as a Contractor V may contract for work involving the inspection, alteration, repair, and servicing of underground piping for a fire protection system only if they are under the direction of persons certified as a Contractor I or Contractor II. The requirement imposed by the bill may result in decreased opportunities for work for a Contractor V.

C. Government Sector Impact:

According to the Department of Financial Services, there is no impact to state or local government.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.102 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 Regulated Industries on March 1, 2021:

The committee substitute:

- Provides that a Contractor I or a Contractor II may design a new fire protection system and design an alteration to an existing system provided:
 - 249 or fewer sprinklers will be relocated or deleted;
 - Occupancy requirements in the Florida Building Code or the Florida Fire Protection Code remain unchanged; and
 - The occupancy hazard code classification is reduced or remains the same;
- Clarifies that a Contractor I or Contractor II is authorized to design a new fire protection system, or design the alteration of an existing fire sprinkler system, when the system meets a specified standard for installation in a one-family, two-family, or manufactured home;
- Eliminates the authorization in current law for a Contractor IV to design fire protection systems, and to design the alteration of an existing system, with 49 or fewer sprinklers;
- Requires a Contractor V to be under the direction of a Contractor I or a Contractor II for inspection of underground piping for a water-based fire protection system; and
- Clarifies that fire protection systems include tanks providing water supply or pump fuel, and piping for such tanks, to allow fire sprinkler contractors to install fuel supply pumping for fire pumps.

²² See 2021 Agency Legislative Bill Analysis (Department of Financial Services) for SB 286, at 2 (Feb. 8, 2021) (on file with the Senate Committee on Regulated Industries) at page 2.

B. Amendments:

None.

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

By the Committee on Regulated Industries; and Senator Perry

580-02308-21

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A bill to be entitled

An act relating to fire sprinklers; amending s.

633.102, F.S.; revising the definition of the term

"Contractor V"; authorizing certain fire protection

system contractors to design certain systems; revising

the definition of the term "fire protection system";

providing an effective date.

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

Section 1. Subsections (3) and (11) of section 633.102, Florida Statutes, are amended to read:

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

(3) (a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is

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

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limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, ~~inspect~~, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor. A Contractor V may inspect underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and ~~does~~ ~~do~~ not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience

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59 from designing any type of fire protection system. A distinction
 60 is made between system design concepts prepared by the design
 61 professional and system layout as defined in this section and
 62 typically prepared by the contractor. However, a person
 63 certified under this chapter as a Contractor I ~~or~~ Contractor
 64 ~~II, or Contractor IV under this chapter~~ may design new fire
 65 protection systems of 49 or fewer sprinklers; ~~and~~ may design
 66 the alteration of an existing fire sprinkler system if the
 67 alteration consists of the relocation, addition, or deletion of
 68 ~~not more than 49~~ or fewer sprinklers, notwithstanding the size
 69 of the existing fire sprinkler system; ~~or may design the~~
 70 alteration of an existing fire sprinkler system if the
 71 alteration consists of the relocation or deletion of 249 or
 72 fewer sprinklers, notwithstanding the size of the existing fire
 73 sprinkler system, if there is no change of occupancy of the
 74 affected areas, as defined in the Florida Building Code and the
 75 Florida Fire Prevention Code, and there is no change in the
 76 water demand as defined in NFPA 13, "Standard for the
 77 Installation of Sprinkler Systems," and if the occupancy hazard
 78 classification as defined in NFPA 13 is reduced or remains the
 79 same as a result of the alteration. A person certified as a
 80 Contractor I, Contractor II, or Contractor IV may design a new
 81 fire protection system ~~or design the alteration of an existing~~
 82 fire protection system, the scope of which complies with NFPA
 83 13D, "Standard for the Installation of Sprinkler Systems in One-
 84 and Two-Family Dwellings and Manufactured Homes," as adopted by
 85 the State Fire Marshal, notwithstanding the number of fire
 86 sprinklers. Contractor-developed plans may not be required by
 87 any local permitting authority to be sealed by a registered

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88 professional engineer.

89 (11) "Fire protection system" means a system individually
 90 designed to protect the interior or exterior of a specific
 91 building or buildings, structure, or other special hazard from
 92 fire. Such systems include, but are not limited to, water
 93 sprinkler systems, water spray systems, foam-water sprinkler
 94 systems, foam-water spray systems, carbon dioxide systems, foam
 95 extinguishing systems, dry chemical systems, and Halon and other
 96 chemical systems used for fire protection use. Such systems also
 97 include any overhead and underground fire mains, fire hydrants
 98 and hydrant mains, standpipes and hoses connected to sprinkler
 99 systems, sprinkler tank heaters, air lines, thermal systems used
 100 in connection with fire sprinkler systems, ~~and~~ tanks providing
 101 water supply or pump fuel, including piping for such tanks, and
 102 pumps connected to fire sprinkler systems.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 354

INTRODUCER: Judiciary Committee and Senator Harrell

SUBJECT: Restitution

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	Fav/CS
2. Stokes	Jones	CJ	Favorable
3. Bond	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 354 amends ss. 775.089 and 985.437, F.S., providing that while the primary purpose of restitution is to compensate the victim, it also serves the rehabilitative and deterrent goals of the criminal and juvenile justice systems.

Additionally, the bill provides that restitution must be determined on a fair market value basis unless the state, victim, or defendant or child, shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution. The court may consider hearsay evidence for the purpose of determining restitution.

The bill is effective July 1, 2021.

II. Present Situation:

Restitution

Restitution is “full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.”¹ “Unlike civil damages, restitution is a criminal sanction. The purpose of restitution is not only to

¹ BLACK’S L. DICTIONARY (11th ed. 2019).

compensate the victim, but also to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.”²

A crime victim has a state constitutional right to restitution. The State Constitution provides that a victim has the “right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.”³ This language was adopted by the voters in 2018.⁴

A sentencing court must order the defendant to make restitution to the victim for damage or loss caused directly or indirectly by the defendant’s offense; and damage or loss related to the defendant’s criminal episode, unless the court finds clear and compelling reasons not to order restitution. If ordered, restitution is a mandatory condition of probation.⁵

How Restitution is Proved and Calculated

In general, the fair market value at the time of the offense is the appropriate value for purposes of restitution. However, the Florida Supreme Court in *Hawthorne*⁶ ruled that “a court is not tied to fair market value as the sole standard for determining restitution amounts, but rather may exercise such discretion as required to further the purposes of restitution.”⁷ The court found that fair market value can be established either through direct testimony of the victim or through evidence of the following four factors:

- Original market cost;
- Manner in which the item was used;
- The general condition and quality of the item; and
- The percentage of depreciation.⁸

A criminal trial and conviction must (unless waived) be heard before a jury and guilt must be proved beyond a reasonable doubt. Restitution, however, is a part of the sentencing process. A sentencing hearing is conducted before the judge alone, and the essential facts need only be proved by a preponderance of the evidence.⁹ Contested restitution hearings are uncommon, in most cases where restitution is ordered the amount of restitution is agreed between the parties.

Evidence Code and Hearsay

The Florida Evidence Code applies equally to all civil and criminal actions, at hearings and at trial.¹⁰ The code prohibits admission of hearsay evidence, unless one of the exceptions apply.¹¹

² *Spivey v. State*, 531 So. 2d 965, 967 (Fla. 1988). See also, *Victim Restitution in the Criminal Process: A Procedural Analysis*, 97 HARV. L. REV. 931 (Feb. 1984).

³ Art. I, s. 16(b)(9), FLA. CONST.

⁴ The language was presented to the voters as Revision 6 on the 2018 General Election ballot, and it is commonly referred to as “Marsy’s Law.”

⁵ Section 775.089(1)(a), F.S.

⁶ *State v. Hawthorne*, 573 So. 2d 330 (Fla. 1991).

⁷ *Id.* at 333.

⁸ *Id.* at 332-33.

⁹ Section 775.089(7), F.S.

¹⁰ Section 90.103, F.S.

¹¹ Section 90.802, F.S.

“Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.¹² The common reasons cited for the hearsay rule include:

- Because the underlying hearsay statement is not made under oath, it is less reliable than in-court testimony given under oath.
- A jury cannot determine the reliability of the hearsay testimony.
- An opposing party cannot cross-examine the person who made the out-of-court statement.¹³

Not all hearsay is inadmissible. The Evidence Code contains 30 exceptions to the hearsay rule.¹⁴ Hearsay evidence that is admitted into evidence may be attacked by an opposing party.¹⁵ Hearsay testimony is admissible in a sentencing hearing, provided the defendant has a fair opportunity to rebut it.¹⁶

All evidence introduced at a hearing or trial, including hearsay, must be weighed for its reliability. The standard jury instructions in a criminal case explains, in relevant part:

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence You may rely upon your own conclusion about the credibility of any witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.¹⁷

The direction to weigh the reliability of the evidence applies equally to a hearing decided by a judge without a jury.

Where hearsay evidence is allowed, such evidence is still subject to other rules of evidence. For instance, the evidence must be relevant,¹⁸ must not be unduly prejudicial or confusing,¹⁹ and the witness must have personal knowledge of the matter.²⁰

Courts have Suggested Change

In 2012, Katrina R. Phillips stole jewelry and sold it. She was convicted for various crimes involving the victim’s stolen jewelry. In a 2013 restitution hearing, the victim testified as to her opinion of the value of the stolen family heirloom jewelry. In her testimony, the victim described how she had reviewed six websites looking for values of similar jewelry. The trial court found

¹² Section 90.801(1)(c), F.S.

¹³ EHRHARDT’S FLORIDA EVIDENCE, 2018 Ed., s. 801.1.

¹⁴ Sections 90.803 and 90.804, F.S.

¹⁵ Section 90.806, F.S.

¹⁶ *Hudson v. State*, 708 So. 2d 256, 261 (Fla. 1998)(capital cases); *McInerney v. State*, 213 So. 3d 933 (Fla. 4th DCA 2017)(non-capital cases, except hearsay not admissible related to a request for sentence enhancement).

¹⁷ Fla. Std. Jury Instruction 3.9.

¹⁸ Section 90.402, F.S.

¹⁹ Section 90.403, F.S.

²⁰ Sections 90.604, F.S.

the victim's testimony credible and reliable, and awarded the victim restitution of \$20,511. The District Court of Appeal found in 2014 that the victim's testimony violated the hearsay rule because it was based on internet research.²¹ The DCA reluctantly reversed the restitution award, saying:

In reaching our conclusion, we recognize that it was practically impossible for the victim to establish the restitution amount without relying on hearsay evidence.

...

The fact that it was practically impossible for the victim to establish the restitution amount without relying on hearsay evidence appears to have caused an unjust result for the victim, because she and the state appear to have no other means by which to prove the restitution amount.

...

[A]lthough we are obligated to remand for a new restitution hearing, we are doubtful that the new hearing will provide the victim with any relief.

We surmise that the victim here is not alone. This court and our sister courts recently have issued multiple opinions reversing restitution awards where the victim and the state have not presented competent, substantial evidence supporting the amount awarded. See, e.g., T.D.C., 117 So.3d at 811 (“[A]bsent circumstances tending to show that [fair market value] does not adequately compensate the victim or otherwise serve the purpose of restitution ... the amount of restitution should be established through evidence of [fair market value] at the time of the theft.”) (citation and quotation marks omitted). In each case, a wholly innocent person has been left with a more difficult, if not impossible, path to recover their stolen items' value. The circuit court in this case recognized this unjust result in honorably attempting to justify its determination of the restitution amount here.²²

The appellate court suggested adding the following language to s. 775.089(7), F.S.:

The court is not bound by fair market value as the sole standard for determining restitution amounts, but rather may exercise such discretion as required to further the purposes of restitution, including consideration of hearsay.²³

On remand, the restitution award was reduced to \$12,046.²⁴

In 2015, Cricket Kathleen Toole stole various goods. She was convicted of dealing in stolen property and false verification of ownership to a pawnbroker. At the restitution hearing, the

²¹ *Phillips v. State*, 141 So. 3d 702 (Fla. 4th DCA 2014).

²² *Id.* at 705-06.

²³ *Id.* at 706.

²⁴ Indian River County, OR Book 2653, Page 1090; and OR Book 2815, Page 2401.

victim testified to the items' value by providing their original price, and guesstimating their replacement value. The trial court ordered restitution of \$9,984.12.²⁵

In 2019, the Fourth DCA reversed the finding that the state had failed to prove all four elements of valuation of restitution. The court then went further, lamenting the continued problems with restitution awards:

Despite the statute, the rules, the case law, and the constitutional amendment, proving restitution continues to be difficult for victims, and receiving compensation for their loss continues to be elusive . . . We have previously suggested a legislative fix . . . yet, the statute remains the same as does the problem--proving restitution.²⁶

The DCA took the further step of certifying the issue for review as a matter of great public importance by the Florida Supreme Court:

Is *Hawthorne*'s formula for determining restitution based on the fair market value of the victim's property still viable after the passage of Amendment 6 (Marsy's Law), or should a trial court no longer be bound by fair market value as the sole standard for determining restitution amounts, and instead exercise such discretion as required to further the purposes of restitution, including consideration of hearsay?²⁷

The case was appealed to the Florida Supreme Court, but was dismissed without opinion after the defendant died.²⁸

III. Effect of Proposed Changes:

The bill amends ss. 775.089 and 985.437, F.S., providing that while the primary purpose of restitution is to compensate the victim, it also serves the rehabilitative and deterrent goals of the criminal and juvenile justice systems.

Additionally, the bill provides that restitution must be determined on a fair market value basis unless the state, victim, or defendant or child, shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution. The court may consider hearsay evidence for the purpose of determining restitution.

The bill is effective July 1, 2021.

²⁵ *Toole v. State*, 270 So. 3d 371, 373 (Fla. 4th DCA 2019), review dismissed, No. SC19-456, 2019 WL 2275025 (Fla. May 29, 2019).

²⁶ *Id.* at 374.

²⁷ *Id.* at 375.

²⁸ *Florida v. Toole*, No. SC19-456, 2019 WL 2275025 (Fla. May 29, 2019)(See docket entry on May 28, 2019).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.089 and 985.437.

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 February 15, 2020:

The committee substitute adds the purposes of restitution and adds that fair market value is the default valuation standard. The committee substitute applies to juvenile delinquency cases in addition to criminal cases.

- B. **Amendments:**

None.



682316

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 55
and insert:
this purpose, provided it finds that the hearsay evidence has a
minimal indicia of reliability. The burden of demonstrating the
amount of the loss sustained by a victim as a result of the
offense is on the state attorney. The burden of demonstrating
the present financial resources and the absence of potential
future financial resources of the defendant and the financial
needs of the defendant and his or her dependents is on the



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defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

Section 2. Subsection (2) of section 985.437, Florida Statutes, is amended to read:

985.437 Restitution.—

(2)(a) While the primary purpose of restitution is to compensate the victim, it also serves the rehabilitative and deterrent goals of the juvenile justice system.

(b) The court may order the child to make restitution in money, through a promissory note cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. Restitution must be determined on a fair market value basis unless the state, victim, or child shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution. The court may consider hearsay evidence for this purpose, provided it finds that the hearsay evidence has a minimal indicia of reliability.

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

And the title is amended as follows:

Delete lines 7 - 12

and insert:

restitution award under certain circumstances;
amending s. 985.437, F.S.; providing for the purposes
of restitution in a delinquency proceeding; specifying



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41 the standards for valuation of a restitution order;
42 authorizing a court to consider hearsay evidence
43 regarding valuation of a restitution award under
44 certain circumstances; providing an effective date.

By the Committee on Judiciary; and Senator Harrell

590-02143-21

2021354c1

A bill to be entitled

An act relating to restitution; amending s. 775.089, F.S.; providing for the purposes of restitution in a criminal proceeding; specifying the standards for valuation of a restitution order; authorizing a court to consider hearsay evidence regarding valuation of a restitution award; amending s. 985.437, F.S.; providing for the purposes of restitution in a delinquency proceeding; specifying the standards for valuation of a restitution order; authorizing a court to consider hearsay evidence regarding valuation of a restitution award; providing an effective date.

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

Section 1. Subsection (7) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(7) (a) While the primary purpose of restitution is to compensate the victim, it also serves the rehabilitative and deterrent goals of the criminal justice system.

(b) Restitution must be determined on a fair market value basis unless the state, victim, or defendant shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution.

(c) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The court may consider hearsay evidence for

Page 1 of 3

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

590-02143-21

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this purpose. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. The burden of demonstrating the present financial resources and the absence of potential future financial resources of the defendant and the financial needs of the defendant and his or her dependents is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

Section 2. Subsection (2) of section 985.437, Florida Statutes, is amended to read:

985.437 Restitution.—

(2) (a) While the primary purpose of restitution is to compensate the victim, it also serves the rehabilitative and deterrent goals of the juvenile justice system.

(b) The court may order the child to make restitution in money, through a promissory note cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. Restitution must be determined on a fair market value basis unless the state, victim, or child shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution. The court may consider hearsay evidence for this purpose.

(c) When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make.

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

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Section 3. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 378

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bradley

SUBJECT: Payment for Construction Services

DATE: March 16, 2021 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2. <u>Ponder</u>	<u>McVane</u>	<u>GO</u>	Fav/CS
3. <u>Paglialonga</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 378 enhances the statutory interest rate for public and private parties that fail to make required payments for certain construction labor, services, and material.

The bill increases, by one percent per month, the remedial interest rate applied to payments wrongfully withheld for construction services for public and private construction projects. For public sector construction projects, the bill increases the interest rate from one percent to two percent per month. Public entities that wrongfully withhold payment to contractors and, likewise, contractors who wrongfully withhold payment to subcontractors and sub-subcontractors on public projects will be liable for interest at a rate of two percent per month on the unpaid amounts. For private sector construction projects, current law specifies that late payments bear interest at the rate specified in s. 55.03, F.S., which provides the general rate of interest on judgments.¹ The bill increases the late payment interest for the private sector to the rate specified in s. 55.03, F.S., *plus* twelve percent per annum.

¹ Under s. 55.03, F.S., the Chief Financial Officer sets rates of interest that apply to judgments or decrees for the calendar quarter beginning January 1 and adjusted quarterly on April 1, July 1, and October 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate. As of January 1, 2021, the current judgment interest rate per annum is 4.81%. Jimmy Patronis Florida's Chief Financial Officer Website, *Current Judgement Interest Rates*, available at: <https://www.myfloridacfo.com/division/aa/localgovernments/current.htm> (last visited Jan. 25, 2021).

Furthermore, the bill clarifies that parties who contract with a public or private entity for construction services and knowingly and intentionally fail to pay the undisputed contract obligations for construction labor, services, or materials, commit misapplication of construction funds, as provided in s. 713.345, F.S. The Construction Industry Licensing Board must take disciplinary against a construction industry licensee found guilty of committing misapplication of construction funds and suspend the licensee's license for a minimum of one year.

The state and local governments and contractors may incur additional costs associated with the increased interest rates applied to the late payment of constructions services.

The provisions of the bill apply only to contracts executed on or after July 1, 2021.

II. Present Situation:

Florida law has several Prompt Payment Acts regulating various aspects of payments connected to construction projects and services. Part VII of ch. 218, F.S., addresses payment for local government construction projects. Chapter 255, F.S., governs payments connected to state agency construction projects, and payments for private construction projects are regulated in chs. 713 and 715, F.S.

Prompt Payment Act for Local Governments

Part VII of ch. 218, F.S., is known as the “Local Government Prompt Payment Act” and requires “payment for all purchases by local governmental entities be made in a timely manner.”² Moreover, the stated purpose of this act is to provide for prompt payments by local governments to parties for construction services, apply interest on late payments made by local governments, and establish a dispute resolution process for contested payments.³

The act applies to a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.⁴ The act defines construction services as all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvements to real property.⁵

Payment Deadlines for Prime Contractors

According to s. 218.735, F.S., when a local governmental entity enters into a contract for construction services with a contractor,⁶ the local government must identify the representative who is to receive contractor invoices. The payment process begins when a contractor submits an invoice. This action starts the local government entity's timeframe to remit payment or reject the invoice.

² Section 218.71, F.S.

³ *Id.*

⁴ Section 218.72(5), F.S.

⁵ Section 218.72(2), F.S.

⁶ Section 218.72(3), F.S.: “Contractor or provider of construction services means the person who contracts directly with a local governmental entity to provide construction services.”

The payment due date depends on whether an agent must approve the invoice. If a local government representative must approve the invoice before it is submitted to the entity for payment, the payment is due 25 business days after the date on which the invoice is stamped as received. If the invoice does not require approval by an entity representative, payment is due 20 days after the date on which the invoice is stamped as received.⁷

If payment is not received by the due date, the contractor can send an overdue notice to the local government entity. After four business days of delivering the overdue notice, if the invoice is not rejected, the invoice will be considered undisputed, except for any amounts that are fraudulent or misleading.⁸

If the invoice does not meet contract requirements, the local government entity must provide the contractor with a written rejection specifying the deficiency and action needed to rectify within 20 business days of receipt. Once the invoice is corrected, payment or notice of rejection of the invoice is due within ten business days of receipt or the first business day after the local government entity's next held meeting.⁹

Payment Deadlines for Subcontractors, Sub-Subcontractors, & Suppliers

When payment is received by a contractor for labor, services, or materials furnished by subcontractors and suppliers, payment is due to those subcontractors and suppliers within 10 days of receipt of payment from the local government entity.¹⁰

If a subcontractor utilizes sub-subcontractors and suppliers, payment to those parties is due within 7 days of the subcontractor receiving payment.¹¹ Under s. 218.735(6), F.S., contractors and subcontractors are entitled to dispute invoices so long as the payment rejection is in writing. The actions required to rectify the dispute must be included in the rejection. However, any undisputed amounts are required to be paid within the outlined time limits.

Penalties for Late Payment

Under the Local Government Prompt Payment Act, if payment for construction services is late or wrongfully withheld, statutorily imposed interest will accrue at a rate of 1 percent per month, or a greater rate specified by contract, until the debt is paid. Attorney fees and court costs are only available to disputes between contractors, subcontractors, and suppliers. They will only be awarded if payments were withheld without any reasonable basis in law or fact.¹²

Prompt Payment Act for State Construction Projects

Sections 255.0705 - 255.078, F.S., are known as the Florida Prompt Payment Act. This act governs the timely payment for construction services by the state or any agency thereof (public

⁷ Section 218.72(1), F.S.

⁸ *Id.*

⁹ Section 218.735(3), F.S.

¹⁰ Section 218.735(6), F.S.

¹¹ *Id.*

¹² Section 218.735(6), F.S.

entity).¹³ This act also governs payments made by contractors to subcontractors and suppliers when the construction services are in connection with a public entity construction project.

Payment Deadline for Public Entity to Contractor

For public entities contracting with a prime contractor, the payment process starts when a contractor submits a pay application to the public entity. The public entity must submit the contractor's request to the Chief Financial Officer within 20 days of receiving the payment application. Upon receipt, the payment officer performs an inspection of the construction services claimed by the payment application. The payment officer must approve or deny the payment application within 10 days. Under these provisions, payment to a contractor who properly performs construction services is due within 30 days after the payment application is submitted.¹⁴

Payment Deadline for Contractor to Subcontractors and Suppliers

Prime contractors typically do not have to pay other parties involved in a public construction project until the public entity has paid the prime contractor.¹⁵ Subcontractors and suppliers are entitled to receive payment from a prime contractor once all the necessary lien waivers and payment applications have been submitted to the prime contractor. After these prerequisites are fulfilled, the prime contractor must release undisputed payments within 30 days after the labor or materials were provided, or 10 days from receipt of payment from the public entity, whichever is later.¹⁶

Penalties for Late Payment

All payments due for the purchase of construction services under the Florida Prompt Payment Act and wrongfully withheld by a public entity or prime contractor bear statutorily imposed interest at the rate of 1 percent per month.¹⁷

Prompt Payment Law for Private Construction Projects

The payment procedures for private construction projects in Florida are described in chs. 713 and 715, F.S. Section 713.346, F.S., describes how persons are required to pay contract obligations for labor, services, or materials provided on account for constructing or altering permanent improvements to real property. Section 715.12, F.S., titled "Construction Contract Prompt Payment Law," specifically applies to written contracts to improve a real property for which a construction lien is authorized under Part I of ch. 713, F.S.

Payment Deadlines and Remedies

Under s. 713.346, F.S., failure to pay any undisputed obligations for labor, services, or materials used in a private construction project within 30 days after payment became due or is received,

¹³ Section 255.073, F.S., defines "public entity" to mean the state, or any office, board, bureau, commission, department, branch, division, or institution thereof.

¹⁴ Section 255.073-74, F.S.

¹⁵ See *International Engineering Services Inc. v. Scherer Const. & Engineering of Cent. Florida, LLC*, 74 So.3d 531 (Fla. 5th DCA 2011); see also *Everett Painting Co., Inc. V. Padula & Wadsworth Const., Inc.*, 856 So.2d 1059 (Fla. DCA 4th 2003).

¹⁶ Section 255.073(3), F.S.

¹⁷ Section 255.073(4), F.S.

whichever last occurs, entitles the person providing such construction services to bring a verified complaint. Based on this complaint and an evidentiary hearing, the court may award either party an accounting of the payment, an injunction, prejudgment attachment, and any other appropriate legal and equitable remedy.

Under s. 715.12, F.S., an obligee¹⁸ is entitled to payment for construction services as described by the terms of a contract, and when all the following events have occurred:

- The obligee has furnished the obligor¹⁹ with a written request for payment.
- The obligor, except the owner of the real property, immediately above the obligee in the chain of contracts has been paid for the obligee's labor, services, or materials.
- The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under s. 713.06, F.S.²⁰

Penalties for Late Payment

Any payment due under the provisions of s. 715.12, F.S., excluding any amounts withheld pursuant to a good faith dispute, bears interest at the rate specified in s. 55.03 F.S., computed beginning on the fourteenth day after payment is due.

A party can withhold payment for reasons specified in s. 713.346 and s. 715.12, F.S. If none of the exceptions apply, any late or wrongfully withheld payments will be subject to interest accruing at the current judgment rate or a rate specified in the contract, whichever is greater.²¹ If the dispute goes to court, the prevailing party will be awarded attorney fees.²²

Construction Industry Licensing Board

Florida regulates construction contracting under Part I of ch. 489, F.S. Florida establishes the Construction Industry Licensing Board ("CILB") under s. 489.107, F.S., to oversee the licensing and various regulations for the Florida construction industry. When applying for a construction license, the CILB will meet to consider the application. The CILB also reviews disciplinary cases and conducts informal hearings regarding licensure.²³

Disciplinary Action

The CILB is authorized to take disciplinary actions upon finding that a licensee has violated Florida construction industry regulations. The CILB may suspend the license holder from all operations as a contractor, revoke a license, or place the license holder on probation. Furthermore, the CILB may attach conditions to any disciplinary action taken, which in the sound discretion of the CILB are deemed appropriate disciplinary measures based on the factual circumstances.²⁴

¹⁸ Section 715.12(3)(b), F.S., defines "obligee" to mean a contractor, subcontractor, sub-subcontractor, or materialman who is entitled to receive payments under a contract that is subject to the Prompt Payment Law.

¹⁹ Section 715.12(3)(a), F.S., defines "obligor" to mean an owner, contractor, subcontractor, or sub-subcontractor who has an obligation to make payments under a contract that is subject to the Prompt Payment Law.

²⁰ Section 715.12(4), F.S.

²¹ Section 715.12(5)(a), F.S.

²² Section 713.346(7), F.S.

²³ Section 489.129, F.S.

²⁴ *Id.*

During Fiscal Year 2019-2020, the CILB received 8,128 complaints of which 1,950 received a finding of probable cause by the CILB or the Department of Business and Professional Regulation (Department) in instances delegated by the CILB).²⁵ Also, during this time frame, the CILB received \$139,512 in unlicensed activity fees, \$111,520 in administrative fines, and \$17,163 in citations.²⁶

Misapplication of Construction Funds

Section 713.345, F.S., provides that the misapplication of construction funds is a crime in Florida. This statute only imposes criminal liability on those who misuse construction project funds and does not impose any fiduciary relationship between parties in contractual relationships for construction, and is not a civil cause of action.

The statute provides that “any person who receives payments for the improvement of real property must apply such portion of any payments to the payment of all amounts then due and owing for services and labor performed.” However, this provision “does not prevent any person from withholding any payment, or any part of a payment, in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials.”

Section 713.345, F.S., continues to state that “any person who knowingly and intentionally fails to comply with paragraph (a) [the proper payment of accounts due and owing] is guilty of misapplication of construction funds[.]” Thus, to be criminally convicted for misapplication of construction funds, there are two relevant elements:

- The party must complete a “wrongful application of funds” in violation of a contract and not regarding a bona fide dispute about the amount due; and
- The party must act “knowingly and intentionally.”²⁷

Acting “knowingly and intentionally” will be presumed when there is a valid lien recorded against the property, the defendant who contracted with the claimant (injured party) received enough funds to pay the claimant, and the defendant failed to pay the claimant for at least 45 days from receipt of the funds. Notwithstanding, a party may still be found guilty if there is sufficient evidence to prove that the misapplication of funds was intentional.

Section 713.345(1)(d), F.S., requires a state attorney or the statewide prosecutor, upon filing an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with misapplication of construction funds to provide a copy of the indictment or information to the Department. The Department must promptly open an investigation to the matter and, if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

²⁵ Florida Department of Business and Professional Regulation 2019-2020 Annual Report, p. 89, available at: <http://www.myfloridalicense.com/dbpr/reg/documents/ULA%20Report%20FY19-20.pdf> (last visited February 8, 2021).

²⁶ *Id.* at p. 55.

²⁷ See *Weber v. State*, 649 So.2d 253 (Fla. 2nd DCA 1994).

Criminal Penalties

Persons convicted for misapplication of construction funds may be subject to different criminal penalties depending on the amount of money that was misapplied. If the amount of payments misapplied total \$100,000 or more, the individual is guilty of a first-degree felony, which is punishable by up to 30 years in state prison, and could be fined as much as \$10,000. If the total amount of misapplied payments are less than \$100,000, but greater than \$1,000, the crime is a second-degree felony, which is punishable by up to 15 years in prison and \$10,000 in fines. Lastly, if the amount of payments misapplied are less than \$1,000, it is a third-degree felony, which is punishable by up to 5 years in prison and a maximum fine of \$5,000.

III. Effect of Proposed Changes:

Section 1 amends s. 218.735 F.S., to increase the interest rate from one percent per month to two percent per month that applies to all payments due and not made within the specified time periods by a local governmental entity, its agent, or a contractor for construction services on a local government project.

Section 2 amends s. 255.071 F.S., to specify that a party who receives payment from the state or any agency thereof for a construction project and knowingly and intentionally fails to pay the undisputed contract obligations to another party for labor, services, or material commits misapplication of construction funds as provided in s. 713.345, F.S.

Section 3 amends s. 255.073 F.S., to increase the interest rate from one percent per month to two percent per month that applies to all payments due and not made within the specified time periods by a public entity, its agent or a contractor for construction services on a state government project

Section 4 amends s. 489.129 F.S., to provide that the Construction Industry Licensing Board (“CILB”) may take disciplinary actions against a licensee for committing misapplication of construction funds in violation of s. 713.345. Under the bill, the board must also suspend all licenses of persons convicted of misapplication of construction funds for a minimum of 1 year from the date of conviction.

Section 5 amends s. 713.345 F.S., to provide that persons convicted of misapplication of construction funds are subject to discipline by the Construction Industry Licensing Board.

Section 6 amends s. 713.346 F.S., to specify that a party who knowingly and intentionally fails to pay the undisputed contract obligations to another party for construction labor, services, or material commits misapplication of construction funds as provided in s. 713.345, F.S.

Section 7 amends s. 715.12 F.S., to increase the interest rate specified in s. 55.03, F.S., by twelve percent per annum, which will apply to late payment amounts for construction labor, services, or material for private sector construction projects.

Section 8 reenacts s. 218.76 F.S., to incorporate the amendment made to s. 218.735, F.S.

Section 9 reenacts s. 255.075 F.S., to incorporate the amendment made to s. 255.073, F.S.

Section 10 provides that the bill applies to contracts executed on or after July 1, 2021.

Section 11 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments....”

If the increase in the interest rate due on late payments by counties and municipalities is deemed to be “requiring” an expenditure under the mandates provision, the legislature may want to consider adding a legislative finding that the bill fulfills an important state interest to ensure the increased interest rate on late payments is binding upon counties and municipalities. As drafted, the bill applies to all persons similarly situated (governmental entities contracting for construction services), including state agencies, school boards, community colleges, counties, and municipalities.

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:

The increased interest rates applied to unpaid contractual obligations for construction labor, services, and materials may have a negative fiscal impact for prime contractors and a positive fiscal impact for subcontractors and parties lower in the chain of contracts.

C. Government Sector Impact:

The increased interest rate proposed by the bill may cause state and local governmental entities to incur additional costs associated with unpaid contractual obligations for construction services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 218.735, 255.071, 255.073, 489.129, 713.345, 713.346, 715.12, 218.76, and 255.075.

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 Governmental Oversight and Accountability on February 17, 2021:

The CS increases the percentage to be added to the interest rate specified in s. 55.03, F.S., from “plus 1 percent” to “plus 12 percent per annum” under the private construction prompt payment provisions. This change matches the increase in interest in the governmental prompt payment provision in the bill and the per annum basis is consistent with how the interest rate in s. 55.03, F.S., is calculated.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Bradley

585-02181-21

2021378c1

1 A bill to be entitled
2 An act relating to payment for construction services;
3 amending s. 218.735, F.S.; increasing the interest
4 rate for certain payments for purchases of
5 construction services; amending s. 255.071, F.S.;
6 specifying that a person, firm, or corporation who
7 fails to make certain payments relating to public
8 projects commits a misapplication of construction
9 funds and is subject to criminal penalties; amending
10 s. 255.073, F.S.; increasing the interest rate for
11 overdue payments for the purchase of construction
12 services; amending s. 489.129, F.S.; expanding the
13 list of actions for which a licensee may be
14 disciplined by the Construction Industry Licensing
15 Board; requiring the board to suspend certain licenses
16 for a minimum period of time under certain
17 circumstances; providing construction; amending s.
18 713.345, F.S.; specifying that a contractor,
19 subcontractor, sub-subcontractor, or other person
20 licensed under ch. 489, F.S., is subject to certain
21 discipline if convicted of misapplication of
22 construction funds; amending s. 713.346, F.S.;
23 specifying that a person, firm, or corporation who
24 fails to make certain payments relating to
25 construction contracts commits a misapplication of
26 constructions funds and is subject to criminal
27 penalties; amending s. 715.12, F.S.; increasing the
28 interest rate for certain payments due under the
29 Construction Contract Prompt Payment Law; conforming a

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30 provision to changes made by the act; reenacting s.
31 218.76(2)(b), F.S., relating to improper payment
32 requests or invoices, to incorporate the amendment
33 made by this act to s. 218.735, F.S., in a reference
34 thereto; reenacting s. 255.075, F.S., relating to
35 mandatory interest, to incorporate the amendment made
36 by this act to s. 255.073, F.S., in a reference
37 thereto; providing applicability; providing an
38 effective date.
39
40 Be It Enacted by the Legislature of the State of Florida:
41
42 Section 1. Subsection (9) of section 218.735, Florida
43 Statutes, is amended to read:
44 218.735 Timely payment for purchases of construction
45 services.—
46 (9) All payments due under this section and not made within
47 the time periods specified by this section shall bear interest
48 at the rate of 2 ~~4~~ percent per month, or the rate specified by
49 contract, whichever is greater.
50 Section 2. Subsection (1) of section 255.071, Florida
51 Statutes, is amended to read:
52 255.071 Payment of subcontractors, sub-subcontractors,
53 materialmen, and suppliers on construction contracts for public
54 projects.—
55 (1) Any person, firm, or corporation who receives a payment
56 from the state or any county, city, or political subdivision of
57 the state, or other public authority, for the construction of a
58 public building, for the prosecution and completion of a public

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work, or for repairs upon a public building or public work shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

Section 3. Subsection (4) of section 255.073, Florida Statutes, is amended to read:

255.073 Timely payment for purchases of construction services.—

(4) All payments due for the purchase of construction services and not made within the applicable time limits shall bear interest at the rate of 2 specified in s. 215.422. After July 1, 2006, such payments shall bear interest at the rate of 1 percent per month, to the extent that the Chief Financial Officer's replacement project for the state's accounting and cash management systems is operational for the particular affected public entity. After January 1, 2007, all such payments due from public entity shall bear interest at the rate of 1 percent per month.

Section 4. Paragraph (r) is added to subsection (1) of section 489.129, Florida Statutes, to read:

489.129 Disciplinary proceedings.—

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate or registration, require financial restitution to a consumer for financial harm directly related to

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a violation of a provision of this part, impose an administrative fine not to exceed \$10,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

(r) Committing misapplication of construction funds in violation of s. 713.345. If a contractor, subcontractor, sub-subcontractor, or other person licensed by the board under this chapter is convicted of misapplication of construction funds, the board must suspend all licenses issued to such licensee under this chapter for a minimum of 1 year from the date of conviction. The suspension required under this paragraph is not exclusive, and the board may impose any additional penalties set forth in this subsection.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender. A contractor does not commit a violation of this subsection when the contractor relies on a building code interpretation rendered by a building official or person authorized by s. 553.80 to enforce the building code, absent a finding of fraud or deceit in the practice of contracting, or gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property on the part of the building official, in a proceeding under chapter 120.

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Section 5. Paragraph (e) is added to subsection (1) of section 713.345, Florida Statutes, to read:

713.345 Moneys received for real property improvements; penalty for misapplication.—

(1)

(e) If a contractor, subcontractor, sub-subcontractor, or other person who is licensed under chapter 489 is convicted of misapplication of construction funds under this section, the licensee is subject to discipline under s. 489.129(1)(r).

Section 6. Subsection (1) of section 713.346, Florida Statutes, is amended to read:

713.346 Payment on construction contracts.—

(1) Any person who receives a payment for constructing or altering permanent improvements to real property shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

Section 7. Paragraph (a) of subsection (5) and paragraph (a) of subsection (6) of section 715.12, Florida Statutes, are amended, and subsections (4) and (7) of that section are republished, to read:

715.12 Construction Contract Prompt Payment Law.—

(4) An obligor must pay an obligee with whom the obligor has a contract when all of the following events have occurred:

(a) The obligee is entitled to a payment at the time and under the terms specified in the contract between the obligor

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and the obligee, and the obligee has furnished the obligor with a written request for payment; and

(b) The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the obligee's request for payment by the person immediately above the obligor in the chain of contracts; and

(c) The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under s. 713.06.

(5) (a) Any payment due under the provisions of subsection (4), excluding any amounts withheld pursuant to subsection (7), shall bear interest at the rate specified in s. 55.03 plus an additional 12 percent per annum, computed beginning on the 14th day after payment is due pursuant to subsection (4).

(6) (a) The right to receive interest on a payment under this section is not an exclusive remedy. This section does not modify the remedies available to any person under the terms of a contract or under any other statute. This section does not modify the rights of any person to recover prejudgment interest awarded to the prevailing party in any civil action or arbitration case. During the period that interest accrues under this section, the interest rate shall be the rate specified in s. 55.03 plus an additional 12 percent per annum or the rate specified in the contract, whichever is greater. A person shall not be entitled to receive both the contract interest and the statutory interest specified in this section.

(7) (a) An owner and a contractor may agree to a provision that allows the owner to withhold a portion of each progress payment until substantial completion of the entire project. The

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owner shall pay the contractor the balance of the contract price, including the amounts withheld from the progress payments, within 14 days after any of the following events occur.

1. Pursuant to the terms of the contract, an architect or engineer certifies that the project is substantially complete and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

2. The issuance of a certificate of occupancy for the project, and within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

3. The owner or a tenant of the owner takes possession of the construction project and, within the time provided in the contract between the owner and the contractor, the owner submits a written punchlist to the contractor and the contractor substantially completes all of the items on the punchlist.

Any funds retained by the owner beyond the time period specified in this subsection shall accrue interest at the rate specified in subsection (5), computed from the date the payment is due to the date the payment is received by the contractor. If the contract between the owner and the contractor does not provide a time period for the owner to submit a written punchlist to the contractor, the time period shall be 15 days from the issuance of the certificate of substantial completion, the issuance of

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the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. If no written punchlist is given to the contractor within the time provided in this subsection, interest begins to accrue 14 days after the issuance of the certificate of substantial completion, the issuance of the certificate of occupancy, or the date the owner or the owner's tenant takes possession of the project, whichever first occurs. For construction projects that are to be built in phases, this subsection applies to each phase of the total project. The contract between the owner and the contractor may specify a shorter time period for disbursing all or any portion of the final payment and the retainage.

(b) Except as provided in paragraph (a), an obligor and obligee may agree to a provision that allows the obligor to withhold a portion of each progress payment until completion of the entire project. The amounts withheld shall bear interest 14 days after payment of such amounts are due under the terms of the contract between the obligor and obligee and the other requirements of subsection (4) have been satisfied.

(c) An obligee may, from time to time, withdraw all or any portion of the amount retained from progress payments upon depositing with the obligor:

1. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;

2. Bonds or notes of the State of Florida; or

3. Certificates of deposit, within the insured limits, from a state or national bank or state or federal savings and loan

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association authorized to do business in this state.

Amounts may not be withdrawn in excess of the market value of the securities listed in subparagraphs 1., 2., and 3. at the time of such withdrawal or in excess of the par value of such securities, whichever is less. The obligee shall execute and deliver all documents reasonably required to allow the obligor to document the transfer and the obligee shall pay any recording or registration costs incurred by the obligor in connection with the transfer. The obligor shall pay the obligee any interest or income earned on the securities so deposited within 30 days after the date such interest or income is received by the obligor. If the deposit is in the form of coupon bonds, the obligor shall deliver each coupon to the obligee within 30 days after the date the coupon matures. An obligee may withdraw funds retained from progress payments only to the extent the obligor has withdrawn such funds for the obligee's labor, services, or materials from the person immediately above the obligor in the chain of contracts.

Section 8. For the purpose of incorporating the amendment made by this act to section 218.735, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 218.76, Florida Statutes, is reenacted to read:

218.76 Improper payment request or invoice; resolution of disputes.—

(2)

(b) If the local governmental entity does not commence the dispute resolution procedure within the time required, a contractor may give written notice to the local governmental

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entity of the failure to timely commence its dispute resolution procedure. If the local governmental entity fails to commence the dispute resolution procedure within 4 business days after such notice, any amounts resolved in the contractor's favor shall bear mandatory interest, as set forth in s. 218.735(9), from the date the payment request or invoice containing the disputed amounts was submitted to the local governmental entity. If the dispute resolution procedure is not commenced within 4 business days after the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a contractor of its contractual obligations.

Section 9. For the purpose of incorporating the amendment made by this act to section 255.073, Florida Statutes, in a reference thereto, section 255.075, Florida Statutes, is reenacted to read:

255.075 Mandatory interest.—A contract between a public entity and a contractor may not prohibit the collection of late payment interest charges authorized under s. 255.073(4).

Section 10. This act applies to contracts executed on or after July 1, 2021.

Section 11. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 602

INTRODUCER: Commerce and Tourism Committee and Senator Burgess

SUBJECT: Business Organizations

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay	CM	Fav/CS
2. Davis	Cibula	JU	Favorable
3. Harmsen	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 602 amends several sections of the Florida Business Corporation Act (FBCA), contained in ch. 607, F.S., and several related statutes. These changes address concerns raised by corporations and the legal community pursuant to a complete revision of the FBCA in 2019.¹ Specifically, the bill:

- Narrows the circumstances under which a shareholder may assert his or her appraisal rights;
- Modifies the market out exception to accommodate privately-held corporations whose stock is not traded on an organized market, but who do have a comparable trading process;
- Addresses appraisal arbitrage, wherein disinterested parties abuse the appraisal rights afforded under Florida law to churn additional profits from the process;
- Makes clarifying and conforming changes to fix minor errors in the 2019 and 2020² FBCA legislation;
- Revises the timeframe for eligible entities to be able to use the name of a dissolved corporation; and
- Clarifies the application of corporation not-for-profit statutes in ch. 617, F.S., to the operation of condominiums, cooperatives, homeowners associations, timeshares, and mobile homeowners associations organized under chs. 718, 719, 720, 721, and 723, F.S.

¹ Chapter 2019-90, Laws of Fla. CS/CS/HB 1009 was signed into law on June 7, 2019, and took effect on January 1, 2020.

² Chapter 2020-32, Laws of Fla. CS/SB 838 was signed into law on June 18, 2020, and took effect upon becoming law.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 607, F.S., the Florida Business Corporation Act (FBCA), to reflect changes to the Model Business Corporation Act³ and ch. 605, F.S., the Florida Revised Limited Liability Corporate Act (FRLCA). In 2020, the Legislature made several clarifying and conforming changes to the FBCA.

Since the 2019 update of the FBCA, the Florida Bar Business Law Section (Business Law Section) has identified three additional areas of concern.⁴ This bill, drafted with input from the Business Law Section and other community stakeholders, modifies the FBCA's provisions to address perceived abuses and fairness issues.

Further discussion of the present situation is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Appraisal Rights

Minority shareholders may dissent to corporate or majority shareholder action by asserting their appraisal rights, pursuant to ss. 607.1301-607.1340, F.S., which requires a corporation to buy the minority shareholders' stock at its "fair value."⁵ This remedy is one of the few protections against actions that "... fundamentally change the nature of the shareholders' investments without the check and balance of informed shareholder approval, and [provide] the opportunity for dissenters to withdraw from the corporation."⁶

A minority shareholder may assert his or her appraisal rights, but only in specific instances. These instances occur when a fundamental corporate change occurs, including (and subject to substantial restrictions and limits) the "domestication or conversion to another type of business entity, a merger, a share exchange, a disposition of all or substantially all of the corporation's assets, an amendment to a corporation's articles of incorporation that creates fractional shares, and in other cases involving a corporation's articles of incorporation, bylaws, or a resolution of its board of directors."^{7,8}

³ American Bar Association, *Model Business Corporation Act* (2016), available at https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf (last visited Feb. 22, 2021).

⁴ Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *White Paper for S.B. 602 & H.B. 339: An Act Relating to Corporations and Other Entities*, 1-2 (Feb. 2021) (on file with the Senate Committee on Judiciary).

⁵ Section 607.1302(1), F.S. Section 607.1301(5), F.S., defines "fair value" as the value of the corporation's shares immediately before the effectiveness of the corporate action in question, using commonly-used valuation concepts and techniques, without discounting for lack of marketability or minority status of the shares.

⁶ Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:1 (2020); see also, *South End Improvement Group, Inc. by & through Bank of New York v. Mulliken*, 602 So. 2d 1327, 1332 (Fla. 4th DCA 1992).

⁷ Section 607.1302(1), F.S.

⁸ Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:2.C (2020).

The appraisal process is effectuated through a judicial hearing, where a court appraises the fair value of the shareholder's interests and assesses the corporation for payment of both the fair value and any accrued interest, calculated according to s. 55.03, F.S.

Triggers of a Minority Shareholder's Appraisal Rights

Section 3 amends s. 607.1302, F.S., to narrow the instances that trigger a minority shareholder's appraisal rights. Section 607.1302(1)(g), F.S., currently entitles shareholders to assert appraisal rights where an amendment to the articles of incorporation or bylaws adversely alters or abolishes the shareholder's voting rights or other rights. The Florida Bar received input that this entitlement could lead to unnecessary and superficial filing of charter amendments that do not actually alter the fundamental corporate governance for the purpose of unjust assertion of appraisal rights.⁹ To prevent such frivolous charter amendments, the bill deletes the broader entitlement in s. 607.1302(1)(g), F.S.

Section 3 also amends current s. 607.1302(1)(i), F.S., to allow minority shareholders who experience specific fundamental corporate changes to assert appraisal rights. This right extends only to shareholders in a corporation with 100 or fewer shareholders, whose shares were authorized on, or after October 1, 2003.

Minority shareholders may still assert their appraisal rights under several other bases enumerated in s. 607.1302(1), F.S.

Market Out Exception to Appraisal Rights

Thirty-eight states, including Florida, operate under the "market out exception," which restricts the appraisal rights available to shareholders of stock in large or publicly traded corporations. "[P]ublic shareholders presumptively have an available market. ... [W]hen a public market exists..., public shareholders must employ market price instead of court-appraisal as the measure of their interests."¹⁰

In Florida, the market out exception excludes shareholders from asserting appraisal rights if their shares are a covered security; are not a covered security, but are traded in an organized market; or are issued by an open end management investment company that is registered with the Securities and Exchange Commission.¹¹

Section 3 broadens the market out exception found in s. 607.1302(2), F.S., by prohibiting appraisal actions that are asserted in connection with a corporation's merger, share exchange, or disposition of corporate assets (as permitted by the corporation's articles of incorporation or bylaws), or those that adversely affect a shareholder of a closely held corporation or a shareholder who holds shares issued prior to October 1, 2003.

This amendment will limit a minority shareholder's ability to assert his or her appraisal rights, if made pursuant to s. 607.1302(1)(f) or (h), F.S., if the shares can be sold on an organized market

⁹ Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *supra* note 4, at 3-4.

¹⁰ Gil Matthews, *The "Market Exception" in Appraisal Statutes* (March 30, 2020), available at <https://corpgov.law.harvard.edu/2020/03/30/the-market-exception-in-appraisal-statutes/> (last visited Feb. 22, 2021).

¹¹ Section 607.1302(2)(a), F.S.

that is liquid and where the value of the shares is reasonably calculated to arrive at a price that reflects an arm's length transaction.

Section 3 also amends the market out exception to apply where the shares held are not a covered security, and therefore are not traded in an organized market, but are subject to a "comparable trading process." The bill defines a "comparable trading process" as one where: (1) the share's market price is determined at least quarterly based on an independent valuation and by following a formalized process that is designed to determine a value for the corporation's shares that is comparable to the value of a comparable publicly traded company; and (2) the corporation repurchases the shares at pricing set by its board of directors based on the independent valuation and subject to established terms and conditions that have been provided to the shareholders. This will permit companies that meet these requirements to prohibit appraisal actions by their minority shareholders, and to instead apply the market out exception.

Section 607.1302(2)(b), F.S., outlines the point in time at which a minority shareholder's right to assert appraisal rights is determined. Section 3 of the bill clarifies that, in cases in which the corporate action in question will be approved by shareholders' signed, written consent, the corporate qualities must be scrutinized at the point at which the record date was fixed to determine the shareholders entitled to sign the consent.

Abuse of Appraisal Rights

The Florida Bar Business Law Section has perceived an abuse of the appraisal rights provisions in Florida.¹² Appraisal arbitrage is when activist investors buy up shares of a corporation merely for the purpose of gaining earnings on any possible upside to the corporation's shares, and asserting appraisal rights to earn interest off of the action.¹³ This bill seeks to address the arbitrage issue by:

- Involving courts in the determination of the appropriate interest to award in appraisal matters, and giving them leeway to award no interest;
- Giving corporations the right to prepay their interest; and
- Requiring the shareholder to acquire a beneficial ownership of shares prior to the initiation of the applicable corporate action that gave rise to appraisal.

Award of Accrued Interest in an Appraisal Action

Section 2 amends s. 607.1301, F.S., to update the definition of "accrued interest" as it applies to a shareholder's appraisal rights. Currently, interest on payments made pursuant to an assertion of one's appraisal rights is calculated at the statutory judgment interest rate as described in s. 55.03, F.S. The bill requires the parties in an appraisal action either to agree to an interest rate between themselves, or to accept a rate determined by a court to be equitable. The court's rate may not exceed the statutory judgment rate described in s. 55.03, F.S. Additionally, this section permits a

¹² Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *White Paper for S.B. 602 & H.B. 339: An Act Relating to Corporations and Other Entities*, 6 (Feb. 2021) (on file with the Senate Committee on Judiciary).

¹³ American Bar Association, *Appraisal Arbitrage* (May 14, 2020), available at https://www.americanbar.org/groups/business_law/publications/the_business_lawyer/find_by_subject/buslaw_tbl_mci_appraisal/#:~:text=In%20the%20controversial%20practice%20of,the%20price%20of%20the%20deal.&text=Thus%2C%20awards%20that%20are%20skewed,practices%20likely%20encourage%20appraisal%20arbitrage. (last visited Feb. 25, 2021).

court to prohibit the payment of interest where it finds that the shareholder who asserted his or her appraisal rights acted arbitrarily or not in good faith in doing so.

Sections 6, 7, and 8 make conforming changes to ss. 607.1322, 607.1326, and 607.1330, F.S., respectively, to reflect both that the rate of interest is variable, and that a court may choose not to award accrued interest pursuant to the amended definition of the term in section 2 of the bill.

Prepayment of Interest

Section 7 amends s. 607.1326, F.S., to give corporations the option to prepay the fair value of the shares that are subject a shareholder's appraisal action. Such prepayment shortens the amount of time during which interest can accrue, and therefore mitigates risk to the corporation. Specifically, the bill allows the corporation to prepay all, or any part of the amount, that it determines is due to the shareholder. If the corporation makes the prepayment within 90 days after the appraisal notice, then the corporation may only be liable for the accrued interest on any amount above what it prepaid to the shareholder. If the corporation makes a payment after the 90-day period, but before a judicial determination of the interest due, then the corporation must prepay at the statutory judgment rate provided for in s. 55.03, F.S., and may be liable for additional interest on any excess payment due, calculated from the date the corporate action became effective.

Section 8 makes conforming changes to s. 607.1330, F.S., to acknowledge the prepayment options provided for in section 7 of the bill.

Beneficial Ownership Required by Record Date

Sections 4 and 5 amend ss. 607.1303 and 607.1321, F.S., respectively, to require a shareholder who wishes to assert his or her appraisal rights to have a beneficial ownership of his or her shares in the corporation by the record date established for the triggering corporate action. Additionally, the bill now requires the shareholder to assert his or her appraisal rights as to all of the shares he or she owns.

Section 5 also amends s. 607.1321, F.S., to require shareholders to have beneficially owned shares in the corporation on the date a tender offer for purchase was made pursuant to s. 607.11035, F.S.

Clarifying and Conforming Changes

Section 1 makes a grammar change from the use of the disjunctive "or" to the conjunctive "and" in s. 605.0410, F.S. According to The Florida Bar Business Law Section, this change is made to correct a glitch that was not caught in previous legislation.¹⁴

Sales in dissolution were transferred to ss. 607.1401-607.1410, F.S., by the 2019 FBCA legislation. **Section 3** removes a reference to a sale in dissolution from s. 607.1302(1)(d), F.S., to conform to prior changes. This section also makes a nonsubstantive grammatical change to s. 607.1302(1)(c), F.S.

¹⁴ The Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *supra* note 4, at 9.

SB 892 (2019) inadvertently changed the period of time from 120 days to 1 year that a dissolved entity's name is unavailable after the effective date of its dissolution. **Section 9** reverts to the 120-day period and makes a separate, non-substantive conforming change.¹⁵

Section 12 clarifies that ch. 617, F.S., regarding corporations not-for-profit, applies to ch. 718, F.S., regarding condominiums, ch. 719, F.S., regarding cooperatives, ch. 720, F.S., regarding homeowners associations, ch. 721, F.S., F.S., regarding timeshares, and ch. 723, F.S., regarding mobile homeowners associations, only to the extent that there is a conflict between the chapters. The bill further clarifies that chs. 718-721 and 723, F.S., control where a conflict arises between those chapters and ch. 617, F.S.

Section 617.0725, F.S., requires not-for-profit corporations to meet specific quorum or voting requirements in order to amend their articles of incorporation's or bylaw's quorum or voting requirements. **Section 10** amends s. 617.0725, F.S., to clarify that a corporation that is an association, as defined in s. 720.301(9), F.S., or any corporation regulated under ch. 718 or 719, F.S., is exempt from this requirement. Generally, chs. 718-720, F.S., govern homeowners' associations, condominium boards, and cooperative boards.

Section 11 updates a cross-references and corrects a scrivener error.

Effective Date

Section 13 of the bill provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁵ Department of State, *Senate Bill 602 Agency Analysis* (January 28, 2021) (on file with the Senate Committee on Judiciary).

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

None.

B. Private Sector Impact:

Several changes will impact certain shareholders negatively; this may be counteracted by the reduction of inflated payments to appraisal arbitrageurs. Additionally, corporations and shareholders will need to familiarize themselves with the changes made to their rights and responsibilities.

C. Government Sector Impact:

CS/SB 602 deletes the provision that defined the interest applicable in appraisal proceedings. As a result, courts may be called on more frequently to determine the interest rate and accrued interest due in such cases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0410, 607.1301, 607.1302, 607.1303, 607.1321, 607.1322, 607.1326, 607.1330, 607.1405, 617.0725, 617.0825, and 617.1703.

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

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

CS by Commerce and Tourism on February 15, 2021:

Clarifies that associations and corporations governed by chs. 718-720, F.S., (e.g., homeowners associations, condominium boards, and cooperative boards) are exempt from the restriction in s. 617.0725, F.S., that prevents not-for-profit corporations from amending the quorum or voting requirement in articles of incorporation or bylaws without approval from the prior-established quorum or voting requirement.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senator Burgess

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1 A bill to be entitled
 2 An act relating to business organizations; amending s.
 3 605.0410, F.S.; revising requirements relating to
 4 inspecting certain records of limited liability
 5 companies; amending s. 607.1301, F.S.; revising the
 6 definition of the term "accrued interest"; amending s.
 7 607.1302, F.S.; revising the circumstances under which
 8 shareholders are entitled to appraisal rights and
 9 certain payments; revising limitations relating to
 10 such rights and payments; revising applicability;
 11 amending s. 607.1303, F.S.; revising the circumstances
 12 in which certain shareholders may assert specified
 13 appraisal rights; amending s. 607.1321, F.S.; revising
 14 requirements for shareholders who wish to assert
 15 appraisal rights relating to specified corporate
 16 actions; amending s. 607.1322, F.S.; making a
 17 technical change; amending s. 607.1326, F.S.;
 18 entitling corporations to prepay a shareholder if the
 19 shareholder makes a demand for payment; specifying
 20 when interest is applicable to such prepayments;
 21 making technical changes; amending s. 607.1330, F.S.;
 22 revising requirements for proceedings relating to
 23 unsettled demands for payment; revising the
 24 eligibility requirements for shareholders entitled to
 25 the fair value of shares during court proceedings;
 26 making technical and conforming changes; amending s.
 27 607.1405, F.S.; revising the requirements for eligible
 28 entities to use the name of a dissolved corporation;
 29 amending s. 617.0725, F.S.; providing applicability;

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

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30 amending ss. 617.0825 and 617.1703, F.S.; revising
 31 applicability; providing an effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. Paragraph (b) of subsection (3) of section
 36 605.0410, Florida Statutes, is amended to read:
 37 605.0410 Records to be kept; rights of member, manager, and
 38 person dissociated to information.—
 39 (3) In a manager-managed limited liability company, the
 40 following rules apply:
 41 (b) During regular business hours and at a reasonable
 42 location specified by the company, a member may inspect and
 43 copy:
 44 1. The records described in subsection (1); and
 45 2. Full information regarding the activities, affairs,
 46 financial condition, and other circumstances of the company as
 47 is just and reasonable if:
 48 a. The member seeks the information for a purpose
 49 reasonably related to the member's interest as a member; and ~~or~~
 50 b. The member makes a demand in a record received by the
 51 company, describing with reasonable particularity the
 52 information sought and the purpose for seeking the information,
 53 and if the information sought is directly connected to the
 54 member's purpose.
 55 Section 2. Subsection (1) of section 607.1301, Florida
 56 Statutes, is amended to read:
 57 607.1301 Appraisal rights; definitions.—The following
 58 definitions apply to ss. 607.1301-607.1340:

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

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(1) "Accrued interest" means interest ~~from the date the corporate action becomes effective until the date of payment, at the rate agreed to by the corporation and the shareholder asserting appraisal rights, or at the rate determined by the court to be equitable, which rate may not be greater than the rate of interest of interest~~ determined for judgments pursuant to s. 55.03; however, if the court finds that the shareholder asserting appraisal rights acted arbitrarily or otherwise not in good faith, no interest shall be allowed by the court, determined as of the effective date of the corporate action.

Section 3. Subsections (1) and (2) of section 607.1302, Florida Statutes, are amended to read:

607.1302 Right of shareholders to appraisal.—

(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(a) Consummation of a domestication or a conversion of such corporation pursuant to s. 607.11921 or s. 607.11932, as applicable, if shareholder approval is required for the domestication or the conversion;

(b) Consummation of a merger to which such corporation is a party:

1. If shareholder approval is required for the merger under s. 607.1103 or would be required but for s. 607.11035, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remains outstanding after consummation of the merger where the terms of such class or series have not been materially

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altered; or

2. If such corporation is a subsidiary and the merger is governed by s. 607.1104;

(c) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights shall not be ~~are not~~ available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(d) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, ~~including a sale in dissolution,~~ except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares or any class or series if:

1. Under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in ss. 607.1406 and 607.1407, within 1 year after the shareholders' approval of the action and in accordance with their respective interests determined at the time of distribution; and

2. The disposition of assets is not an interested transaction;

(e) An amendment of the articles of incorporation with respect to a class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or the right to repurchase the fractional share so created;

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(f) Any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided as of the record date by the articles of incorporation, bylaws, or a resolution of the board of directors providing for appraisal rights, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval;

~~(g) An amendment to the articles of incorporation or bylaws of the corporation, the effect of which is to alter or abolish voting or other rights with respect to such interest in a manner that is adverse to the interest of such shareholder, except as the right may be affected by the voting or other rights of new shares then being authorized of a new class or series of shares;~~

~~(h)~~ An amendment to the articles of incorporation or bylaws of a corporation, the effect of which is to adversely affect the interest of the shareholder by altering or abolishing appraisal rights under this section;

(h) ~~(i)~~ With regard to a class of shares prescribed in the articles of incorporation in any corporation as to which that particular class of shares was in existence prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, and for classes of shares authorized on or after October 1, 2003, in any corporation with 100 or fewer shareholders prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to

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any of his, her, or its shares;

2. Altering or abolishing the voting rights pertaining to any of his, her, or its shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or reclassification of any of his, her, or its shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his, her, or its percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his, her, or its shares, or making any of his, her, or its shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation;

(i) ~~(j)~~ An amendment of the articles of incorporation of a social purpose corporation to which s. 607.504 or s. 607.505 applies;

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175 (j)~~(k)~~ An amendment of the articles of incorporation of a
 176 benefit corporation to which s. 607.604 or s. 607.605 applies;

177 (k)~~(l)~~ A merger, domestication, conversion, or share
 178 exchange of a social purpose corporation to which s. 607.504
 179 applies; or

180 (l)~~(m)~~ A merger, domestication, conversion, or share
 181 exchange of a benefit corporation to which s. 607.604 applies.

182 (2) Notwithstanding subsection (1), the availability of
 183 appraisal rights under paragraphs (1)(a), (b), (c), (d), ~~and~~
 184 (e), (f), and (h) shall be limited in accordance with the
 185 following provisions:

186 (a) Appraisal rights shall not be available for the holders
 187 of shares of any class or series of shares which is:

188 1. A covered security under s. 18(b)(1)(A) or (B) of the
 189 Securities Act of 1933;

190 2. Not a covered security, but traded in an organized
 191 market (or subject to a comparable trading process) and has at
 192 least 2,000 shareholders and the outstanding shares of such
 193 class or series have a market value of at least \$20 million,
 194 exclusive of the value of outstanding shares held by the
 195 corporation's subsidiaries, by the corporation's senior
 196 executives, by the corporation's directors, and by the
 197 corporation's beneficial shareholders and voting trust
 198 beneficial owners owning more than 10 percent of the outstanding
 199 shares; or

200 3. Issued by an open end management investment company
 201 registered with the Securities and Exchange Commission under the
 202 Investment Company Act of 1940 and which may be redeemed at the
 203 option of the holder at net asset value.

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204 (b) The applicability of paragraph (a) shall be determined
 205 as of:

206 1. The record date fixed to determine the shareholders
 207 entitled to receive notice of the meeting of shareholders to act
 208 upon the corporate action requiring appraisal rights, the record
 209 date fixed to determine the shareholders entitled to sign a
 210 written consent approving the corporate action requiring
 211 appraisal rights, or, in the case of an offer made pursuant to
 212 s. 607.11035, the date of such offer; or

213 2. If there will be no meeting of shareholders, no written
 214 consent approving the corporate action, and no offer ~~is~~ made
 215 pursuant to s. 607.11035, the close of business on the day
 216 before the consummation of the corporate action or the effective
 217 date of the amendment of the articles, as applicable.

218 (c) Paragraph (a) is not applicable and appraisal rights
 219 shall be available pursuant to subsection (1) for the holders of
 220 any class or series of shares where the corporate action is an
 221 interested transaction.

222 (d) For the purposes of subparagraph (a)2., a comparable
 223 trading process exists if:

224 1. The market price of the corporation's shares is
 225 determined at least quarterly based on an independent valuation
 226 and by following a formalized process that is designed to
 227 determine a value for the corporation's shares that is
 228 comparable to the value of comparable publicly traded companies;
 229 and

230 2. The corporation repurchases the shares at the price set
 231 by its board of directors based upon the independent valuation
 232 and subject to certain terms and conditions established by the

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corporation and provides the corporation's shareholders with a trading market comparable to that typically available had the corporation's shares been traded in an organized market.

Section 4. Subsection (1) of section 607.1303, Florida Statutes, is amended, and paragraph (c) is added to subsection (2) of that section, to read:

607.1303 Assertion of rights by nominees and beneficial owners.—

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if:

(a) The record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder or the voting trust beneficial owner;

(b) The particular beneficial shareholder or voting trust beneficial owner acquired all such shares before the record date established under s. 607.1321 in connection with the applicable corporate action; and

(c) The record shareholder ~~and~~ notifies the corporation in writing of ~~its~~ the name and address (if the record shareholder beneficially owns the shares as to which appraisal rights are being asserted) or notifies the corporation in writing of the name and address of the particular ~~of each~~ beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted.

The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record

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shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(c) Acquired all shares of the class or series before the record date established under s. 607.1321 in connection with the applicable corporate action.

Section 5. Subsections (1), (2), and (3) of section 607.1321, Florida Statutes, are amended to read:

607.1321 Notice of intent to demand payment.—

(1) If a proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must have beneficially owned the shares of such class or series as of the record date for the shareholders' meeting at which the proposed corporate action is to be submitted to a vote;

(b) Must deliver to the corporation before the vote is taken written notice of the shareholder's intent, if the proposed corporate action is effectuated, to demand payment for all shares of such class or series beneficially owned by the shareholder as of the record date for the shareholders' meeting at which the proposed corporate action is to be submitted to a vote ~~if the proposed corporate action is effectuated;~~ and

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291 (c) ~~(b)~~ Must not vote, or cause or permit to be voted, any
 292 shares of such class or series in favor of the proposed
 293 corporate action.

294 (2) If a proposed corporate action requiring appraisal
 295 rights under s. 607.1302 is to be approved by written consent, a
 296 shareholder who wishes to assert appraisal rights with respect
 297 to any class or series of shares:

298 (a) Must have beneficially owned the shares of such class
 299 or series as of the record date established for determining who
 300 is entitled to sign a written consent;

301 (b) Must assert such appraisal rights for all shares of
 302 such class or series beneficially owned by the shareholder as of
 303 the record date for determining who is entitled to sign the
 304 written consent; and

305 (c) Must not sign a consent in favor of the proposed
 306 corporate action with respect to that class or series of shares.

307 (3) If a proposed corporate action specified in s.
 308 607.1302(1) does not require shareholder approval pursuant to s.
 309 607.11035, a shareholder who wishes to assert appraisal rights
 310 with respect to any class or series of shares:

311 (a) Must have beneficially owned the shares of such class
 312 or series as of the date the offer to purchase is made pursuant
 313 to s. 607.11035;

314 (b) Must deliver to the corporation before the shares are
 315 purchased pursuant to the offer a written notice of the
 316 shareholder's intent to demand payment if the proposed corporate
 317 action is effected for all shares of such class or series
 318 beneficially owned by the shareholder as of the date the offer
 319 to purchase is made pursuant to s. 607.11035; and

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320 (c) ~~(b)~~ Must not tender, or cause or permit to be tendered,
 321 any shares of such class or series in response to such offer.

322 Section 6. Paragraph (a) of subsection (2) of section
 323 607.1322, Florida Statutes, is amended to read:

324 607.1322 Appraisal notice and form.—

325 (2) The appraisal notice must be delivered no earlier than
 326 the date the corporate action became effective, and no later
 327 than 10 days after such date, and must:

328 (a) Supply a form that specifies the date that the
 329 corporate action became effective and that provides for the
 330 shareholder to state:

331 1. The shareholder's name and address.

332 2. The number, classes, and series of shares as to which
 333 the shareholder asserts appraisal rights.

334 3. That the shareholder did not vote for or consent to the
 335 transaction.

336 4. Whether the shareholder accepts the corporation's offer
 337 as stated in subparagraph (b)4.

338 5. If the offer is not accepted, the shareholder's
 339 estimated fair value of the shares and a demand for payment of
 340 the shareholder's estimated value plus accrued interest, if and
 341 to the extent applicable.

342 Section 7. Section 607.1326, Florida Statutes, is amended
 343 to read:

344 607.1326 Procedure if shareholder is dissatisfied with
 345 offer.—

346 (1) A shareholder who is dissatisfied with the
 347 corporation's offer as set forth pursuant to s. 607.1322(2)(b)4.
 348 must notify the corporation on the form provided pursuant to s.

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607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus accrued interest, if and to the extent applicable.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus accrued interest, if and to the extent applicable, under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

(3) With respect to a shareholder who properly makes demand for payment pursuant to subsection (1), at any time after the shareholder makes such demand, including during a court proceeding under s. 607.1330, the corporation shall have the right to prepay to the shareholder all or any portion of the amount that the corporation determines to be due under s. 607.1322(2)(b)3. and the shareholder shall be obligated to accept such prepayment.

(a) If such prepayment is made within 90 days after the earlier of the date on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the deadline date by which the appraisal notice is required to be provided by the corporation under s. 607.1322(2), accrued interest will be payable, if at all, to the shareholder entitled to appraisal rights, calculated and accrued from the date on which the corporate action became effective and only on amounts that are determined to be due to the shareholder and are above the amount so prepaid. Accrued interest will not be payable to the

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shareholder entitled to appraisal rights on the prepayment previously made to the shareholder by the corporation pursuant to this paragraph.

(b) If such prepayment is made more than 90 days after the earlier of the date on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the deadline date by which the appraisal notice is required to be provided by the corporation under s. 607.1322(2), the prepayment must include accrued interest on the amount of the prepayment, calculated at the rate of interest determined for judgments pursuant to s. 55.03 and calculated and accrued from the date that the corporate action became effective through the date of the prepayment previously made to the shareholder by the corporation pursuant to this paragraph. In addition, accrued interest will be payable to the shareholder entitled to appraisal rights on such amounts, if any, determined to be due to the shareholder in excess of the prepaid amount, calculated and accrued from the date on which the corporate action became effective.

Section 8. Subsections (1) and (5) of section 607.1330, Florida Statutes, are amended to read:

607.1330 Court action.—

(1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest, if and to the extent applicable, calculated and accrued from the date the corporate action became effective and taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant

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to s. 607.1326(3) ~~from the date of the corporate action~~. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

(5) Each shareholder entitled to appraisal rights who is made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares as found by the court, plus accrued interest, if and to the extent applicable and as found by the court, taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant to s. 607.1326(3).

Section 9. Subsection (5) of section 607.1405, Florida Statutes, is amended to read:

607.1405 Effect of dissolution.—

(5) Except as provided in s. 607.1422(4), the name of a dissolved corporation is not available for assumption or use by another eligible entity until 120 days ~~1 year~~ after the effective date of dissolution unless the dissolved corporation provides the department with a record, signed as required by s. 607.0120, permitting the immediate assumption or use of the name by another eligible entity.

Section 10. Section 617.0725, Florida Statutes, is amended to read:

617.0725 Quorum.—An amendment to the articles of incorporation or the bylaws which adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum

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and voting requirements then in effect or proposed to be adopted, whichever is greater. This section does not apply to any corporation that is an association, as defined in s. 720.301(9), or any corporation regulated under chapter 718 or chapter 719.

Section 11. Subsection (9) of section 617.0825, Florida Statutes, is amended to read:

617.0825 Board committees and advisory committees.—

(9) This section does not apply to a committee established under chapter 718, chapter 719, or chapter 720 to perform the functions set forth in s. 718.303(3), s. 719.303(3), s. 720.305(2), s. 720.303(2), or s. 720.3035(1), or s. 720.405, respectively.

Section 12. Section 617.1703, Florida Statutes, is amended to read:

617.1703 Application of chapter.—

(1) (a) This chapter is applicable to a corporation that is an association as defined in and regulated by any of chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners' associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile homeowners' associations, except:

1. For In the event of any conflict between the provisions of this chapter and chapter 718 ~~regarding condominiums~~, chapter 719 ~~regarding cooperatives~~, chapter 720 ~~regarding homeowners' associations~~, chapter 721 ~~regarding timeshares~~, or chapter 723; or

2. As otherwise provided for in chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723.

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465 (b) If subparagraph (a)1. or subparagraph (a)2. applies
466 ~~regarding mobile home owners' associations, the applicable~~
467 provisions of such other respective chapters shall apply.
468 (2) The provisions of ss. 617.0605-617.0608 do not apply to
469 corporations regulated by any of the foregoing chapters or to
470 any other corporation where membership in the corporation is
471 required pursuant to a document recorded in the county property
472 records.
473 Section 13. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 702

INTRODUCER: Judiciary Committee and Senator Thurston

SUBJECT: Individual Retirement Accounts

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Schrader	Knudson	BI	Favorable
2. Bond	Cibula	JU	Fav/CS
3. Schrader	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 702 clarifies that any interest in an individual retirement account (IRA) or individual retirement annuity received in a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. As the bill clarifies, but does not modify, existing law or practice, the bill is remedial in nature and applies retroactively to all transfers made incident to divorce.

The bill is effective upon becoming a law.

II. Present Situation:

Asset Protections Available in Florida

A creditor can collect money owed by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, such as a debt. The creditor may then use that judgment to collect from the debtor, i.e., executing the judgement, using certain legal tools such as garnishing of wages and bank accounts and attaching liens to personal and real property. The Florida Constitution and Florida Statutes both contain exemptions to protect certain real and personal property of natural persons from forced sale by creditors. State constitutional exemptions, such as those for homestead property,¹ can only be modified through a proposed constitutional amendment that is subsequently approved by the electorate. Exemptions provided

¹ See FLA. CONST. art. X, s. 4.

in Florida Statutes may be modified through the regular legislative process. Chapter 222, F.S., specifies the types of property that is exempt from the claims of creditors.

Section 222.21, F.S., provides that pension money and certain tax-exempt funds or accounts are exempt from legal processes, such as forced sale. Subsection (1) protects certain money received by any debtor as a pensioner of the United States. Subsection (2) protects any money or other assets payable to an owner, a participant, or a beneficiary from, and any interest² therein of any owner, beneficiary, or participant if the fund or account meets certain qualifications. These funds or accounts are commonly known as qualified, tax-exempt retirement accounts, and must be:

- Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or other governing instrument preapproved by the Internal Revenue Service (IRS) as exempt from taxation under certain sections of the Internal Revenue Code of 1986 (IRC), as amended, regarding qualified retirement plans,³ unless the exemption was overturned in a final, non-appealable, proceeding;
- Maintained in accordance with a plan or governing instrument determined by the IRS to be exempt from taxation under certain sections of the IRC regarding qualified retirement plans,⁴ unless such exemption was overturned in a final, non-appealable, proceeding; or
- Not maintained in accordance with one of the above-described plans or governing instruments, if the person claiming the exemption proves by a preponderance of the evidence that the fund or account is maintained in substantial compliance with the applicable sections regarding tax-exempt retirement accounts, or would have been in substantial compliance with the applicable requirements for exemption under those sections, but for the negligent or wrongful conduct of another person.

The fund or account need not be maintained in accordance with a plan or governing instrument covered by any part of the Employee Retirement Income Security Act (ERISA) to be exempt.⁵ The funds or accounts are only protected to the extent they are not otherwise subject to claims of an alternate payee under a qualified domestic relations order, or claims of a surviving spouse pursuant to an order determining elective share and contribution in accordance with ch. 732, F.S.

Paragraph (2)(c) of s. 222.21, F.S., provides that the exemption for such money, other assets, or interest in these qualified, tax-exempt retirement accounts survives the owner's death upon a direct transfer or other eligible rollover excluded from gross income under the IRC,⁶ such as, but not limited to, the direct transfer or eligible rollover to an inherited individual retirement account (IRA).⁷ This allows a beneficiary to enjoy the exemption upon transfer. Paragraph (2)(c) expressly states that it is intended to clarify existing law, be remedial in nature, and to apply

² Under Florida law, the word "interest," as used in statute providing exemption from creditors' claims for any interest of owner, beneficiary, or participant in enumerated tax-preferred funds or accounts, is a broad term encompassing many rights of a party, tangible, intangible, legal, and equitable. *In re Maddox*, 713 F.2d 1526, 1530 (11th Cir. 1983).

³ 26 U.S.C. ss. 401(a) (stock bonus, pension, and profit sharing plans), 403(a) and 403(b) (annuity plans), 408 (individual retirement accounts (IRAs)), 408A (Roth IRAs), 409 (tax credit employee stock ownership plans), 414 (provides definitions and special rules for certain plans, such as retirement plans for government and church employees), 457(b) (deferred compensation plans), or 501(a) (defining organizations exempt from taxation, including those defined in 401(a)).

⁴ *Id.*

⁵ Section 222.21(2)(b), F.S.

⁶ Section 222.21(2)(c), F.S.

⁷ See 26 U.S.C. s. 408(d)(3); pursuant to s. 222.21(2), F.S., individual retirement accounts, and interests therein, maintained in accordance with 26 U.S.C. s. 408 are exempted from legal processes, such as forced sale by creditors.

retroactively to all inherited individual retirement accounts without regard to the date the account was created.

The specified tax-exempt retirement plans enumerated in subsection (2) are exempt from all legal proceedings, including bankruptcy, even though bankruptcy is a federal proceeding governed by the United States Bankruptcy Code (Bankruptcy Code).⁸

Transfer of Section 408 Retirement Accounts Incident to Divorce

Retirement accounts exempted from taxation by s. 408 of the IRC are exempted from legal processes, such as forced sale, by Florida law.⁹ Section 408 of the IRC contemplates individual retirement accounts (IRAs) and individual retirement annuities.¹⁰ An individual retirement account is a trust created or organized in the United States for the exclusive benefit of an individual, or his beneficiaries, of which the governing document meets certain requirements.¹¹ An individual retirement annuity is an annuity contract, or an endowment contract, issued by an insurance company which meets certain requirements.¹² An interest in an individual retirement account or individual retirement annuity may be transferred, but only upon the death or divorce of the original owner.¹³ The transfer of an interest in an individual retirement account or individual retirement annuity incident to divorce is not a taxable event.¹⁴ Effective upon such transfer, the interest in the individual retirement account or individual retirement annuity is treated as the account of the spouse.¹⁵

Exempted Property in Bankruptcy Proceedings

The Bankruptcy Code expressly recognizes exemptions provided under the state or local law of the domicile of the debtor.¹⁶ Florida is an opt-out state, meaning that when a Florida resident files for bankruptcy, Florida law provides the exemptions available to the debtor—not the Bankruptcy Code.¹⁷ Florida law contains a number of exemptions included in the Bankruptcy Code, such as IRAs and pensions, profit sharing, and retirement benefits.¹⁸ Florida also exempts all inherited IRA accounts from creditor claims.¹⁹ Likewise, the Bankruptcy Code exempts retirement funds in a fund or account exempt from taxation under most of the same sections of the IRC, such as those applicable to stock bonus, pension, and profit sharing plans, annuity plans, IRAs, and deferred compensation plans.²⁰

⁸ 11 U.S.C. s. 101, *et. seq.*; 11 U.S.C. s. 522(b)(3)(A).

⁹ Section 222.21(2), F.S.

¹⁰ 26 U.S.C. s. 408(a)-(c).

¹¹ *See* 26 U.S.C. s. 408(a), *et. seq.*

¹² 26 U.S.C. s. 408(b).

¹³ 26 U.S.C. s. 408(d).

¹⁴ 26 U.S.C. s. 408(d)(6).

¹⁵ *Id.*

¹⁶ 11 U.S.C. s. 522(b)(3)(A).

¹⁷ Section 222.20, F.S.

¹⁸ Section 222.21(2), F.S.

¹⁹ Section 222.21(2)(c), F.S.

²⁰ 11 U.S.C. s. 522(d)(12) exempts “retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under sections 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.”

Section 222.21(2), F.S., exempts qualified plans exempt from taxation under ss. 401(a), 403(a) and 403(b), specifically, 408,

Regarding the exemption for an IRA or an interest therein where such was awarded incident to a divorce, a recent bankruptcy court decision in the United States Bankruptcy Appellate Panel for the 8th Circuit, *In re Lerbakken*, 590 B.R. 895 (B.A.P. 8th Cir. 2018), may indicate a need to clarify Florida's exemption.

In *Lerbakken*, the 8th Circuit Bankruptcy Appellate Panel stated that two requirements must be satisfied in order for a debtor to claim funds as exempt retirement funds pursuant to the Bankruptcy Code:

- The amount must be retirement funds; and
- The retirement funds must be in an account that is exempt from taxation under one of the provisions of the IRC.²¹

The Bankruptcy Code does not define the term “retirement funds,” so the term is applied within its ordinary meaning: sums of money set aside for the day an individual stops working.²² In *Lerbakken*, the 8th Circuit Bankruptcy Appellate Panel held that funds held in a 401K and IRA accounts awarded to a Chapter 7 debtor as part of a stipulated property settlement in a divorce proceeding were not “retirement funds” because while the debtor's former spouse had saved funds in those accounts for a joint retirement, any interest the debtor held in those accounts resulted from a property settlement. However, it is notable that the ruling was an 8th Federal Circuit opinion on appeal from the United States Bankruptcy Court for the District of Minnesota. Thus, the *Lerbakken* Court's ruling interpreting the meaning of “retirement funds” in would not be controlling in the 11th Circuit (of which Florida is a part).

The issue of whether an IRA is exempt from bankruptcy proceedings when awarded incident to a divorce proceeding has arisen in the 11th Circuit recently.²³ During the course of the proceedings, the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, acknowledged that, although the authority to make the certification for appeal had shifted from Bankruptcy Court to the district court during the pendency of ruling on a motion for appeal, there did exist a “matter of public importance” on the IRA issue and “no controlling decision of the Eleventh Circuit or the Supreme Court exists.”²⁴ Further, the Bankruptcy Court acknowledges that “conflicting opinions from other jurisdictions arguably exist.”²⁵ Thus, the Bankruptcy Court had intended to certify the issue for appellate review.²⁶

408A, 414, 457(b), specifically, and 501(a) of the IRC. Unlike the Bankruptcy Code, Florida additionally exempts qualified tax credit employee stock ownership plans exempted from taxation under section 409 of the IRC.

²¹ 11 U.S.C. s. 522(d)(12).

²² *Clark v. Rameker*, 573 U.S. 122, 127 (2014).

²³ This case has been recently dismissed without prejudice on upon the parties reaching settlement in the matter. *Carapella v. Glass*, No. 8:19-cv-3050-T-02 (M.D. Fla. Jan. 8, 2021). Thus, the Court did not reach a decision on the IRA issue.

²⁴ *In re Glass*, 613 B.R. 33, 41 (Bankr. M.D. Fla. 2020).

²⁵ *Id.* at 41.

²⁶ *Id.* at 34. Under 28 U.S.C. s. 158(d)(2)(A), the grounds for certification for direct review in a court of appeals are: (i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of Supreme Court of the United States, or involves a matter of public importance; (ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or (iii) an immediate appeal from the judgment, order, or decree may materially advance the progression of the case or proceeding in which the appeal is taken.

III. Effect of Proposed Changes:

Section 1 amends paragraph (2)(c) of s. 222.21, F.S., to clarify that any interest in any IRA or individual retirement annuity received in a transfer incident to divorce as described in s. 408(d)(6) of the Internal Revenue Code of 1986 (IRC), as amended, continues to be exempt from creditor claims after the transfer, regardless of the date the transfer was made.

To the extent s. 222.21(a), F.S., exempts a transferee's interest in an IRA or individual retirement annuity upon a transfer incident to divorce pursuant to s. 408(d)(6) of the IRC, the bill clarifies current law, which exempts such interests from the claims of the transferee's creditors.

Existing law provides that s. 222.21(2)(c), F.S., is intended to clarify existing law, is remedial in nature, and shall have retroactive application. As a result, the provision of the bill will apply retroactively as well.

Section 2 provides that the act shall take effect upon becoming a law

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Retroactive Application

Once a bill becomes law, it is presumed to apply only prospectively. The presumption against retroactive application may be rebutted by clear evidence of legislative intent.²⁷

To determine if the terms of a statute and the purpose of the enactment indicate retroactive application, a court may consider the language, structure, purpose, and legislative history of the enactment.²⁸

²⁷ *Florida Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187 (Fla. 2011).

²⁸ *Id.*

If the legislation clearly expresses an intent that the law apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.²⁹ Even when the Legislature has clearly expressed its intention that the statute be given a retroactive application, courts must refuse to do so if it impairs vested rights, creates new obligations, imposes new penalties,³⁰ or impairs an obligation of contract.³¹ For example, ex post facto legislation, i.e., a law that expands criminal liability retroactively by either creating a new crime for past conduct or by increasing the penalty for past conduct, is forbidden by both the Florida Constitution and the United States Constitution. Statutes that do not alter vested rights but relate only to remedies or procedure may be applied retroactively.³²

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 222.21, Florida Statutes.

²⁹ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010); *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

³⁰ *Id.*

³¹ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

³² *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d 494 (Fla. 1999).

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 2, 2021:

The committee substitute differs from the underlying bill in terms of style and grammar but not substance.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Thurston

590-02341-21

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A bill to be entitled

An act relating to individual retirement accounts; amending s. 222.21, F.S.; specifying that certain interests received by a transferee after a divorce are exempt from claims of creditors upon being awarded to or received by the transferee; specifying that such interests remain exempt; providing retroactive applicability; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and certain tax-exempt funds or accounts from legal processes.—

(2)

(c) Any money or other assets or any interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does not cease to be exempt after the owner's death by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended. An interest in any fund or account awarded or received in a transfer incident to divorce described in s. 408(d)(6) of the Internal Revenue Code of 1986, as amended, is exempt upon the interest being awarded or received and continues to be exempt

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

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thereafter. This paragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts and to each transfer incident to divorce without regard to the date an account was created or the transfer was made.

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 728

INTRODUCER: Senator Broxson

SUBJECT: Credit for Reinsurance

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3. <u>Arnold</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 728 provides insurers with credit for reinsurance and eliminates additional collateral requirements for reinsurers if the reinsurer is domiciled in a “reciprocal jurisdiction” and meets requirements set forth in the bill. The requirements include, but are not limited to:

- Minimum capital and surplus requirements;
- Minimum solvency or capital ratios;
- Annual confirmation from the domiciliary supervisory authority stating that the reinsurer meets the capital, surplus, and minimum solvency or capital ratio requirements; and
- Prompt claims payment practices.

The bill defines a reciprocal jurisdiction as:

- A non-United States jurisdiction that is subject to an in-force covered agreement¹ with the United States or, in the case of a covered agreement between the United States and the European Union,² an EU member state;
- A United States jurisdiction that meets the National Association of Insurance Commissioners’ requirements for accreditation; or
- Any other qualified jurisdiction that meets the Office of Insurance Regulation’s requirements as set forth in rule.

The bill also provides insurers with protections against reinsurer failure that include, but are not limited to, requiring the reinsurer to post collateral equal to all outstanding reinsurance liabilities

¹ The bill defines a “covered agreement” to mean an agreement entered into pursuant 31 U.S.C ss. 313 and 314 (The Dodd-Frank Wall Street Reform and Consumer Protection Act) which is effective or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

² The United States entered into such an agreement on September 22, 2017, the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.

in the event the reinsurer enters into receivership; requiring the reinsurer to consent to the jurisdiction of courts of the State of Florida; and requiring the reinsurer to post collateral equal to all outstanding liabilities if the reinsurer resists enforcement of a court order from a jurisdiction in which it has consented.

The bill's revisions to Florida law governing credit for reinsurance enact 2019 revisions to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786).

The bill takes effect July 1, 2021.

II. Present Situation:

Reinsurance

Reinsurance is insurance that a primary insurance company purchases from a second insurance company to protect itself from major losses sustained by its policyholders. The large-scale losses are generally caused by natural disasters such as wildfires or hurricanes. The primary insurance company is referred to as the ceding insurer and the second insurance company is referred to as the reinsurer. In this contract of indemnity, the reinsurer agrees to compensate the ceding insurer for all or part of the losses and loss adjustment expenses the ceding insurer incurs under insurance policies it has issued to its policyholders.³ The vast majority of reinsurers, who are domiciled overseas, do not write insurance policies of their own to policyholders.

Through the reinsurance contract, the insurer reduces its probable maximum loss on either an individual risk (facultative reinsurance) or a specific class of insurance policies (treaty reinsurance) by ceding a portion of its liability to the reinsurer.⁴ Reinsurance serves to: (1) increase underwriting capacity; (2) stabilize underwriting results; (3) protect against catastrophic losses; (4) finance expanding volume; (5) withdraw from a class or line of business, or a geographic area, within a short time period; and (6) share large risks with other companies.⁵ Reinsurers may in turn further spread their assumed risk by purchasing reinsurance protection, which is called retrocession.⁶

Reinsurance creates privity of contract between the insurer and reinsurer, and does not modify the insured's policy with its insurer.⁷ Therefore, the reinsurance contract does not discharge the insurer from its primary liability to its policyholders or its obligation to pay policyholder claims.⁸

³ National Association of Insurance Commissioners, *Glossary of Insurance Terms* https://content.naic.org/consumer_glossary.htm#R (last visited Feb. 25, 2021).

⁴ Barron's Dictionary of Insurance Terms, 437 (6th ed. 2013).

⁵ *Id.*

⁶ The Center for Insurance Policy and Research, National Association of Insurance Commissioners, *Reinsurance*, (last updated Feb. 26, 2020), available at https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited Feb. 25, 2021).

⁷ U.S. Department of Treasury, Federal Insurance Office, *The Breadth and Scope of the Global Reinsurance Market and the Critical Role Such Market Plays in Supporting Insurance in the United States*, 7 (December 2014), available at <https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/FIO%20-Reinsurance%20Report.pdf> (last visited Feb. 25, 2021).

⁸ *Id.*

Similarly, only the insurer has direct rights to recover from the reinsurer unless expressly provided for in the reinsurance contract.⁹

Florida regulates reinsurance under s. 624.610, F.S., and rule 69O-144, F.A.C.

Regulation of Reinsurance

The United States (U.S.) is both the largest insurance market and reinsurance market in the world by premium volume.¹⁰ Furthermore, roughly half of all business originates from North America.¹¹ In support of U.S. domestic insurers, non-U.S. reinsurers provide a majority of the available reinsurance protection to fulfill the needs of the U.S. insurance market. In 2018, offshore reinsurers assumed 65.7 percent of U.S. ceded premiums.¹² Together, offshore reinsurers and alien-owned¹³ U.S. reinsurers assumed 88.9 percent of U.S. ceded premiums during the same year.¹⁴ Such access to alien reinsurance contributes to the global diversification of risk, provides claims burden relief to U.S. reinsurers, and mitigates financial impacts of catastrophes.¹⁵

The purchase of reinsurance from reinsurers not domiciled or licensed in the U.S. may expose U.S. domestic insurers to additional credit risk to the extent that any reinsurer is unable to meet the obligation assumed in the reinsurance contract. It similarly presents significant challenges to U.S. state insurance regulators charged with regulating insurer solvency.

Direct Regulation of Authorized Reinsurers

The Office of Insurance Regulation (OIR) directly regulates authorized reinsurers¹⁶ domiciled and licensed in Florida as well as reinsurers licensed in Florida, but domiciled in a foreign state.¹⁷ When an insurer cedes business to a licensed reinsurer, the insurer is permitted under statutory accounting rules to recognize a reduction in its liabilities for the amount of ceded liabilities, without a regulatory requirement for the reinsurer to post collateral to secure the reinsurer's ultimate payment of the reinsured liabilities.¹⁸ A reinsurer licensed in a state is subject to solvency and other regulations imposed by the state which are applicable to insurance companies generally.

⁹ *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 408 (1929); *Citizens Cas. Co. v. Am. Glass. Co.*, 166 F.2d 91, 95 (7th Cir. 1948).

¹⁰ See *supra* note 7, at 1.

¹¹ *Id.*

¹² Reinsurance Association of America, *Offshore Reinsurance in the U.S. Market: 2018 Data*, 13, available at https://www.reinsurance.org/RAA/Industry_Data_Center/Offshore_Report/Offshore_Report_2018_Data.html (last visited Feb. 25, 2021).

¹³ In the insurance context, “alien” means domiciled in a foreign country. “Alien” is distinguishable from “foreign,” which means domiciled in a state other than the one in which the company is writing business.

¹⁴ See *supra* note 12, at 14.

¹⁵ International Association of Insurance Supervisors, *Reinsurance and Financial Stability*, 8 (July 2012), available at <https://www.iaisweb.org/file/34046/reinsurance-and-financial-stability> (last visited Feb. 25, 2021).

¹⁶ An “authorized” reinsurer is one that is licensed or accredited in a given state.

¹⁷ Section 624.610(3)(a) and (b), F.S.

¹⁸ *Id.*

Indirect Regulation of Unauthorized Reinsurers

In the absence of direct supervisory authority, OIR indirectly regulates unauthorized reinsurers¹⁹ by limiting the ceding insurer's credit for reinsurance unless the reinsurer posts collateral to secure the reinsurer's ultimate payment of the reinsured liabilities.²⁰

The 2007 Legislature reduced the collateral requirements for insurers to receive credit for reinsurance commensurate with the financial strength of the reinsurer and the quality of the regulatory regime, and authorized OIR to enact rulemaking to implement corresponding regulatory changes.²¹ In considering whether to allow credit for reinsurance, the reinsurer must hold surplus in excess of \$250 million and have a secure financial strength rating (SFSR) from at least two statistical rating organizations deemed acceptable by the Commissioner of OIR (Commissioner).²² The Commissioner must also consider:

- The domiciliary regulatory jurisdiction of the reinsurer;
- The structure and authority of the domiciliary regulator with regard to solvency regulation and the financial surveillance of the reinsurer;
- The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction;
- The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles;
- The domiciliary regulator's willingness to cooperate with U.S. regulators in general and OIR in particular;
- The history of performance by reinsurers in the domiciliary jurisdiction;
- Any documented evidence of substantial problems with the enforcement of valid U.S. judgments in the domiciliary jurisdiction; and
- Any other matters deemed relevant by the Commissioner.²³

¹⁹ An "unauthorized" reinsurer fails to meet the definition of an authorized reinsurer. *See supra* note 13. Furthermore, "unauthorized" is distinguishable from "non-U.S." A U.S. reinsurer that does not meet the definition of "authorized" reinsurer is considered "unauthorized." However, non-U.S. reinsurers cannot become accredited in a U.S. state based on their own domestic license.

²⁰ Historically, in order to receive financial statement credit for unauthorized reinsurance, a U.S. insurer must have been the beneficiary of security posted by the unauthorized reinsurer, providing collateral equal to 100 percent of the actuarially-estimated liabilities under the reinsurance contract.

²¹ Chapter 2007-1, s. 15, Laws of Fla.

²² Section 624.610(3)(e), F.S.

²³ Section 624.610(3)(e)(1)-(8), F.S.

The collateral required to allow 100 percent credit shall be no less than the percentage specified for the lowest rating as indicated in the SFSR below:²⁴

Rating	Collateral Required	AM Best	S&P	Moody's	Fitch	Demotech
Secure – 1	0%	A++	AAA	Aaa	AAA	A"
Secure – 2	10%	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-	A'
Secure – 3	20%	A	A+, A	A1, A2	A+, A	A
Secure – 4	50%	A-	A-	A3	A-	n/a
Secure – 5	75%	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-	n/a
Vulnerable – 6	100%	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD	n/a

Revisions to NAIC Model Law 785 and Regulation 786

The 2019 revisions to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) incorporate substantive provisions from the 2017 Bilateral Agreement between the United States and European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement) reached between the U.S. Department of the Treasury, U.S. Trade Representative, and the European Union (EU).

The Covered Agreement, in part, commits the U.S. to phasing-out state-based reinsurance collateral requirements for EU reinsurers by 2022.²⁵ It further exempts EU reinsurers from current U.S. domiciliary requirements for authorized reinsurer status by creating a new, broader classification of jurisdiction called “reciprocal jurisdiction.”²⁶ Credit for Reinsurance Model Law (#785) defines a “reciprocal jurisdiction” as a jurisdiction that meets one of the following requirements:

- “A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or in the case of a covered agreement between the United States and European Union, is a member state of the European Union”;²⁷
- “A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
- A qualified jurisdiction, as determined by the commissioner ²⁸

²⁴ Rule 69O-144.007(4), F.A.C.

²⁵ United States Department of Treasury, Federal Insurance Office, *Statement of the United States on the Covered Agreement with the European Union*, 1 (September 22, 2017), available at https://home.treasury.gov/system/files/311/US_Covered_Agreement_Policy_Statement_Issued_September_2017_1.pdf (last visited Feb. 25, 2021).

²⁶ *Id.*

²⁷ National Association of Insurance Commissioners, Credit for Reinsurance Model Law-785, 7 (Summer 2019), available at <https://www.naic.org/store/free/MDL-785.pdf> (last visited Feb. 25, 2021).

²⁸ *Id.*

“Covered agreements” are authorized under 31 U.S.C. ss. 313 and 314 where the term is defined. The term means:

a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.²⁹

NAIC Accreditation and Adoption of Model Laws

NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department to promote sound insurer financial solvency regulation. The accreditation program is also designed to allow for interstate cooperation and reduces regulatory redundancies.³⁰ For example, the OIR’s examinations may be recognized by other member states, thereby avoiding the need to have a Florida domestic insurer examined by multiple states.³¹

Presently, each of the 50 states, the District of Columbia, and Puerto Rico are accredited. Once accredited, a state is subject to a full accreditation review every 5 years, as well as interim reviews.³² One major component of NAIC accreditation standards is the adequacy of “solvency laws and regulations in each accredited state to protect consumers” and guaranty funds, through the adoption of model laws.³³

Effective January 1, 2019, NAIC included the 2011 revisions to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) as accreditation standards.³⁴ It subsequently included the 2019 revisions to Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) as accreditation standards to be effective October 1, 2022.³⁵

²⁹ 31 U.S.C. s. 313(r)(2).

³⁰ National Association of Insurance Commissioners, *Financial Regulation Standards and Accreditation Program*, 2 (December 2019), available at https://content.naic.org/sites/default/files/inline-files/FRSA%20Pamphlet%202012-2019_0.pdf (last visited Feb. 25, 2021).

³¹ *Id.*

³² National Association of Insurance Commissioners, *State Legislative Brief: The NAIC Accreditation Program* (November 2019), available at https://www.naic.org/documents/cmte_legislative_liaison_brief_accreditation.pdf (last visited Feb. 25, 2021).

³³ *See supra* note 29.

³⁴ *Id.*

³⁵ National Association of Insurance Commissioners, *CIPR Topics: Reinsurance* (September 1, 2019), available at https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited Feb. 25, 2021).

III. Effect of Proposed Changes:

Section 1 amends s. 624.610, F.S., which provides the criteria under which an insurer is given credit for reinsurance. The bill provides insurers with credit for reinsurance if the reinsurer is domiciled in a “reciprocal jurisdiction” and meets the requirements of this section. It defines “reciprocal jurisdiction” as a jurisdiction that is:

- A non-U.S. jurisdiction that is subject to an in-force covered agreement³⁶ with the U.S. or, in the case of a covered agreement between the United States and the European Union,³⁷ an E.U. member state;
- A U.S. jurisdiction that meets the NAIC’s requirements for accreditation; or
- Any other qualified jurisdiction that meets the OIR’s requirements as set forth in rule.

Additional requirements of the qualified jurisdiction to be specified by Financial Services Commission (FSC)³⁸ rule include:

- The jurisdiction allows an insurer domiciled, or having its head office, in the jurisdiction to take credit for reinsurance ceded to an insurer domiciled in the United States in the same manner as reinsurance ceded to insurers domiciled in that jurisdiction.
- The jurisdiction does not require an assuming insurer domiciled in the United States to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the jurisdiction or as a condition for allowing the ceding insurer to take credit for the ceded risk.
- The jurisdiction provides written confirmation that it recognizes the state regulatory approach to group supervision and group capital and that insurers and insurance groups domiciled, or maintaining their headquarters, in a jurisdiction accredited by the National Association of Insurance Commissioners are subject only to worldwide prudential insurance group supervision by the domiciliary state and are not subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.
- The jurisdiction provides written confirmation that information regarding insurers and their parent, subsidiary, or affiliated entities shall be provided to the office in accordance with a memorandum of understanding or similar document between the office and such qualified jurisdiction.

A reinsurer domiciled in a reciprocal jurisdiction must maintain minimum capital and surplus in the amount of \$250 million, or a greater amount as specified by FSC rule, and certain minimum solvency or capital ratios. A non-U.S. jurisdiction subject to an in-force covered agreement must maintain a minimum solvency or capital ratio specified in the covered agreement. A U.S. jurisdiction must maintain a risk-based capital ratio of 300 percent of the authorized control

³⁶ The bill defines a “covered agreement” to mean an agreement entered into pursuant 31 U.S.C. ss. 313 and 314 (The Dodd-Frank Wall Street Reform and Consumer Protection Act) which is effective or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

³⁷ The United States entered into such an agreement on September 22, 2017, the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.

³⁸ The Financial Services Commission is comprised of the Governor, Attorney General, Chief Financial Officer and the Commissioner of Agriculture.

level,³⁹ calculated pursuant to s. 624.4085, F.S. A qualified jurisdiction subject to this section must maintain a minimum solvency or capital ratio determined by OIR to be an effective measure of solvency.

The reinsurer's supervisory authority must annually confirm to OIR whether the reinsurer complies with these minimum requirements. In the event the reinsurer falls below these minimum requirements, or if regulatory action is taken against it for serious noncompliance with applicable law, the reinsurer must provide written notice to OIR.

The reinsurer must consent to the jurisdiction of Florida state courts and the designation of the CFO for purposes of lawful service of process in any action, suit, or proceeding brought by the insurer against the reinsurer. The reinsurer must consent to pay all final judgements declared enforceable in the jurisdiction where the judgment was obtained, and the reinsurance contract must contain a provision requiring the reinsurer to provide security equal to 100 percent of reinsurance liabilities in the event the reinsurer resists enforcement of a final judgment or a properly enforceable arbitration award.

The reinsurer must agree to provide security equal to 100 percent of reinsurance liabilities and notify the insurer if the reinsurer enters into receivership for conservation, rehabilitation, or liquidation purposes.

Upon request by OIR, the reinsurer must provide the following additional documentation:

- Annual audited financial statements, for the 2-year period before entering into the reinsurance agreement and on an annual basis thereafter, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.
- The solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor, for the 2-year period before entering into the reinsurance agreement.
- Before entering into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more regarding reinsurance assumed from ceding insurers domiciled in the U.S.
- Before entering into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the reinsurer.
- Additional information as reasonably required by OIR.

The reinsurer must pay claims promptly pursuant to FSC rule.

OIR may revoke the reinsurer's eligibility for recognition if the reinsurer fails to meet one or more of the requirements of the subsection. In the event OIR revokes the reinsurer's eligibility,

³⁹ Risk-based capital is a capital adequacy standard that represents the amount of required capital an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers certain material risks depending on the type of insurer, and generates the regulatory minimum amount of capital that a company is required to maintain to avoid regulatory action. The risk-based capital standards raises a safety net for insurers, is uniform among states, and operates as a tripwire system to give state insurance regulators authority for timely corrective action.

the insurer does not qualify for credit for reinsurance except to the extent the reinsurer has provided collateral to secure the reinsurance liabilities.

Many reinsurers domiciled in what the bill defines as “reciprocal jurisdictions” are currently required under Florida law to hold surplus in excess of \$250 million and have a secure financial strength rating from at least two statistical rating agencies.⁴⁰ The bill will allow reinsurers in reciprocal jurisdictions to instead meet the requirements created by this bill. This will allow insurers in this state to receive credit for reinsurance obtained from reinsurers having a surplus of less than \$250 million if the reinsurer is domiciled in a reciprocal jurisdiction and otherwise meets the requirements established by the bill.

Section 2 provides an effective date of 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:

Allowing insurers to receive credit for reinsurance and eliminating additional collateral requirements for reinsurers if the reinsurer is domiciled in a “reciprocal jurisdiction” provides U.S. domestic insurers with greater access to global reinsurance and improves diversification of risk.

⁴⁰ See s. 624.610(3)(e), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.610, 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 Broxson

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1 A bill to be entitled
 2 An act relating to credit for reinsurance; amending s.
 3 624.610, F.S.; making a technical change; transferring
 4 specified authority and duties relating to credit for
 5 reinsurance from the Commissioner of Insurance to the
 6 Office of Insurance Regulation; revising the attorney
 7 designation requirement in reinsurance agreements with
 8 certain assuming insurers under certain circumstances;
 9 adding conditions under which a ceding insurer must be
 10 allowed credit for reinsurance; defining the terms
 11 "reciprocal jurisdiction" and "covered agreement";
 12 specifying requirements for assuming insurers and
 13 reinsurance agreements; requiring the office to
 14 publish a list of reciprocal jurisdictions on its
 15 website; authorizing the office to remove reciprocal
 16 jurisdictions under a specified circumstance;
 17 specifying documentation requirements; authorizing a
 18 ceding insurer or its representative that is subject
 19 to rehabilitation, liquidation, or conservation to
 20 seek a certain court order; providing construction;
 21 specifying a limitation on credit taken by a ceding
 22 insurer; requiring the office to publish on its
 23 website a list of certain assuming insurers;
 24 authorizing the office to revoke or suspend an
 25 assuming insurer's eligibility under certain
 26 circumstances; prohibiting credit for reinsurance
 27 under certain circumstances; providing exceptions;
 28 making technical changes; conforming provisions to
 29 changes made by the act; providing an effective date.

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Present subsections (4) through (15) of section
 34 624.610, Florida Statutes, are redesignated as subsections (5)
 35 through (16), respectively, a new subsection (4) is added to
 36 that section, and subsection (2), paragraphs (c), (e), and (f)
 37 of subsection (3), present subsection (4), paragraph (a) of
 38 present subsection (5), and paragraph (b) of present subsection
 39 (11) are amended, to read:
 40 624.610 Reinsurance.—
 41 (2) Credit for reinsurance must be allowed a ceding insurer
 42 as either an asset or a reduction ~~deduction~~ from liability on
 43 account of reinsurance ceded only when the reinsurer meets the
 44 requirements of paragraph (3) (a), paragraph (3) (b), ~~or~~ paragraph
 45 (3) (c), or subsection (4). Credit must be allowed under
 46 paragraph (3) (a) or paragraph (3) (b) only for cessions of those
 47 kinds or lines of business that the assuming insurer is
 48 licensed, authorized, or otherwise permitted to write or assume
 49 in its state of domicile or, in the case of a United States
 50 branch of an alien assuming insurer, in the state through which
 51 it is entered and licensed or authorized to transact insurance
 52 or reinsurance.
 53 (3)
 54 (c)1. Credit must be allowed when the reinsurance is ceded
 55 to an assuming insurer that maintains a trust fund in a
 56 qualified United States financial institution, as defined in
 57 paragraph (6) (b) ~~(5) (b)~~, for the payment of the valid claims of
 58 its United States ceding insurers and their assigns and

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59 successors in interest. To enable the office to determine the
60 sufficiency of the trust fund, the assuming insurer shall report
61 annually to the office information substantially the same as
62 that required to be reported on the NAIC Annual Statement form
63 by authorized insurers. The assuming insurer shall submit to
64 examination of its books and records by the office and bear the
65 expense of examination.

66 2.a. Credit for reinsurance must not be granted under this
67 subsection unless the form of the trust and any amendments to
68 the trust have been approved by:

69 (I) The insurance regulator of the state in which the trust
70 is domiciled; or

71 (II) The insurance regulator of another state who, pursuant
72 to the terms of the trust instrument, has accepted principal
73 regulatory oversight of the trust.

74 b. The form of the trust and any trust amendments must be
75 filed with the insurance regulator of every state in which the
76 ceding insurer beneficiaries of the trust are domiciled. The
77 trust instrument must provide that contested claims are valid
78 and enforceable upon the final order of any court of competent
79 jurisdiction in the United States. The trust must vest legal
80 title to its assets in its trustees for the benefit of the
81 assuming insurer's United States ceding insurers and their
82 assigns and successors in interest. The trust and the assuming
83 insurer are subject to examination as determined by the
84 insurance regulator.

85 c. The trust remains in effect for as long as the assuming
86 insurer has outstanding obligations due under the reinsurance
87 agreements subject to the trust. No later than February 28 of

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88 each year, the trustee of the trust shall report to the
89 insurance regulator in writing the balance of the trust and list
90 the trust's investments at the preceding year end, and shall
91 certify that the trust will not expire prior to the following
92 December 31.

93 3. The following requirements apply to the following
94 categories of assuming insurer:

95 a. The trust fund for a single assuming insurer consists of
96 funds in trust in an amount not less than the assuming insurer's
97 liabilities attributable to reinsurance ceded by United States
98 ceding insurers, and, in addition, the assuming insurer shall
99 maintain a trustee surplus of not less than \$20 million. Not
100 less than 50 percent of the funds in the trust covering the
101 assuming insurer's liabilities attributable to reinsurance ceded
102 by United States ceding insurers and trustee surplus shall
103 consist of assets of a quality substantially similar to that
104 required in part II of chapter 625. Clean, irrevocable,
105 unconditional, and evergreen letters of credit, issued or
106 confirmed by a qualified United States financial institution, as
107 defined in paragraph (6) (a) ~~(5) (a)~~, effective no later than
108 December 31 of the year for which the filing is made and in the
109 possession of the trust on or before the filing date of its
110 annual statement, may be used to fund the remainder of the trust
111 and trustee surplus.

112 b. (I) In the case of a group including incorporated and
113 individual unincorporated underwriters:

114 (A) For reinsurance ceded under reinsurance agreements with
115 an inception, amendment, or renewal date on or after August 1,
116 1995, the trust consists of a trustee account in an amount not

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less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trustee surplus of which \$100 million must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(II) The incorporated members of the group must not be engaged in any business other than underwriting of a member of the group, and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the insurance regulator an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(e) If the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), paragraph (c), or paragraph (d), the office commissioner may

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allow credit, but only if the assuming insurer holds surplus in excess of \$250 million and has a secure financial strength rating from at least two statistical rating organizations deemed acceptable by the office commissioner as having experience and expertise in rating insurers doing business in Florida, including, but not limited to, Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. In determining whether credit should be allowed, the office commissioner shall consider the following:

1. The domiciliary regulatory jurisdiction of the assuming insurer.
2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer.
3. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.
4. The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles.
5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the office in particular.
6. The history of performance by reinsurers in the domiciliary jurisdiction.
7. Any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.
8. Any other matters deemed relevant by the office

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~~commissioner~~. The office commissioner shall give appropriate consideration to insurer group ratings that may have been issued. The ~~office commissioner~~ may, in lieu of granting full credit under this subsection, reduce the amount required to be held in trust under paragraph (c).

(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state pursuant to paragraph (a) or paragraph (b), the credit permitted by paragraph (c) or paragraph (d) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1.a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the Chief Financial Officer, pursuant to s. 48.151, ~~or a designated attorney~~ as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

2. This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer meeting the requirements of this subsection.

(a) The assuming insurer must be licensed in, and have its

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head office in or be domiciled in, as applicable, a reciprocal jurisdiction. As used in this subsection, the term "reciprocal jurisdiction" means a jurisdiction that is any of the following:

1. A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority; or, in the case of a covered agreement between the United States and the European Union, a jurisdiction that is a member state of the European Union. As used in this subsection, the term "covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is currently in effect or in a period of provisional application and which addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

2. A United States jurisdiction that meets the requirements for accreditation under the Financial Regulation Standards and Accreditation Program of the National Association of Insurance Commissioners.

3. A qualified jurisdiction, as determined by the office, which is not otherwise described in subparagraph 1. or subparagraph 2. and which meets all of the following additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by commission rule:

a. The jurisdiction allows an insurer domiciled, or having its head office, in the jurisdiction to take credit for reinsurance ceded to an insurer domiciled in the United States

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in the same manner as reinsurance ceded to insurers domiciled in that jurisdiction.

b. The jurisdiction does not require an assuming insurer domiciled in the United States to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the jurisdiction or as a condition for allowing the ceding insurer to take credit for the ceded risk.

c. The jurisdiction provides written confirmation that it recognizes the state regulatory approach to group supervision and group capital and that insurers and insurance groups domiciled, or maintaining their headquarters, in a jurisdiction accredited by the National Association of Insurance Commissioners are subject only to worldwide prudential insurance group supervision by the domiciliary state and are not subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

d. The jurisdiction provides written confirmation that information regarding insurers and their parent, subsidiary, or affiliated entities shall be provided to the office in accordance with a memorandum of understanding or similar document between the office and such qualified jurisdiction.

The office shall timely publish on its website a list of reciprocal jurisdictions. The office may remove a reciprocal jurisdiction determined to no longer meet the requirements of this paragraph.

(b)1. The assuming insurer must have and maintain on an

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ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in the amount of \$250 million or in a greater amount specified by commission rule.

2. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis:

a. Minimum capital and surplus equivalents, or net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, in the amount of \$250 million or in a greater amount specified by commission rule.

b. A central fund containing a balance of \$250 million or a greater amount specified by commission rule.

(c) If credit is allowed for reinsurance ceded to the assuming insurer pursuant to:

1. Subparagraph (a)1., the assuming insurer must maintain a minimum solvency or capital ratio specified in the applicable covered agreement.

2. Subparagraph (a)2., the assuming insurer must maintain a risk-based capital ratio of 300 percent of the authorized control level, calculated in accordance with s. 624.4085.

3. Subparagraph (a)3., the assuming insurer must maintain a solvency or capital ratio determined by the office to be an effective measure of solvency.

(d) The assuming insurer must, in a form specified by the commission:

1. Agree to provide prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements set forth in paragraph (b) or paragraph (c), or if

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any regulatory action is taken against it for serious noncompliance with applicable law of any jurisdiction.

2. Consent in writing to the jurisdiction of the courts of this state and to the designation of the Chief Financial Officer, pursuant to s. 48.151, as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer. This subparagraph does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such agreement is unenforceable under applicable insolvency or delinquency laws.

3. Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor which have been declared enforceable in the jurisdiction where the judgment was obtained.

4. Confirm in writing that it will include in each reinsurance agreement a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or enforcement of a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

5. Confirm in writing that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree to notify the

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ceding insurer and the office and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer if the assuming insurer enters into such a solvent scheme of arrangement. Such security must be consistent with subsection (5) or as specified by commission rule.

(e) If requested by the office, the assuming insurer or its legal successor must provide, on behalf of itself and any legal predecessors, the following additional documentation:

1. The assuming insurer's annual audited financial statements, for the 2-year period before entering into the reinsurance agreement and on an annual basis thereafter, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

2. The solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor, for the 2-year period before entering into the reinsurance agreement.

3. Before entering into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more regarding reinsurance assumed from ceding insurers domiciled in the United States.

4. Before entering into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer.

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349 5. Additional information as reasonably required by the
 350 office.

351 (f) The assuming insurer must maintain a practice of prompt
 352 payment of claims under reinsurance agreements and must report
 353 to the office reinsurance recoverables that are more than 90
 354 days overdue or that are in dispute, as specified by commission
 355 rule.

356 (g) The assuming insurer must annually provide to the
 357 office confirmation from its reciprocal jurisdiction, on a form
 358 adopted by the commission or as otherwise specified by
 359 commission rule, that, as of the preceding December 31 or as of
 360 the annual date otherwise statutorily reported to the reciprocal
 361 jurisdiction, the assuming insurer complied with the
 362 requirements of paragraphs (b) and (c).

363 (h) This subsection does not preclude an assuming insurer
 364 from providing the office with information on a voluntary basis.

365 (i) If subject to a legal process of rehabilitation,
 366 liquidation, or conservation, as applicable, the ceding insurer
 367 or its representative may seek and, if determined appropriate by
 368 the court in which the proceedings are pending, obtain an order
 369 requiring that the assuming insurer post security for all
 370 outstanding ceded liabilities.

371 (j) This subsection does not limit or alter in any way the
 372 capacity of parties to a reinsurance agreement to agree on
 373 requirements for security or other terms in the reinsurance
 374 agreement, except as expressly prohibited by this section or
 375 other applicable law or commission rule.

376 (k)1. Credit may be taken under this subsection only for
 377 reinsurance agreements entered into, amended, or renewed on or

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378 after the date on which the assuming insurer has satisfied the
 379 requirements to assume reinsurance under this subsection, and
 380 only with respect to losses incurred and reserves reported on or
 381 after the later of the date on which the assuming insurer has
 382 met all eligibility requirements pursuant to this subsection or
 383 the effective date of the new reinsurance agreement, amendment,
 384 or renewal.

385 2. This paragraph does not alter or impair a ceding
 386 insurer's right to take credit for reinsurance for which, and to
 387 the extent that, credit is not available under this subsection,
 388 if the reinsurance qualifies for credit under any other
 389 applicable provision of law or commission rule.

390 3. This subsection does not authorize an assuming insurer
 391 to withdraw or reduce the security provided under any
 392 reinsurance agreement, except as authorized by the terms of the
 393 agreement.

394 4. This subsection does not limit or alter in any way the
 395 capacity of parties to any reinsurance agreement to renegotiate
 396 the agreement.

397 (l) The office shall timely publish on its website a list
 398 of assuming insurers that meet all of the requirements of this
 399 subsection.

400 (m) If the office determines that an assuming insurer no
 401 longer meets one or more of the requirements of this subsection,
 402 the office may revoke or suspend the eligibility of the assuming
 403 insurer for recognition under this subsection.

404 1. During the suspension of an assuming insurer's
 405 eligibility, a reinsurance agreement issued, amended, or renewed
 406 after the effective date of the suspension does not qualify for

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407 credit, except to the extent that the assuming insurer's
 408 obligations under the contract are secured in accordance with
 409 subsection (5).

410 2. If an assuming insurer's eligibility is revoked, a
 411 credit for reinsurance may not be granted after the effective
 412 date of the revocation with respect to any reinsurance agreement
 413 entered into by the assuming insurer, including a reinsurance
 414 agreement entered into before the date of revocation, except to
 415 the extent that the assuming insurer's obligations under the
 416 contract are secured in a form acceptable to the office and
 417 consistent with subsection (5).

418 (5)(4) An asset allowed or a reduction ~~deduction~~ from
 419 liability taken for the reinsurance ceded by an insurer to an
 420 assuming insurer not meeting the requirements of subsections
 421 (2), ~~and~~ (3), and (4) is allowed in an amount not exceeding the
 422 liabilities carried by the ceding insurer. The reduction
 423 ~~deduction~~ must be in the amount of funds held by or on behalf of
 424 the ceding insurer, including funds held in trust for the ceding
 425 insurer, under a reinsurance contract with the assuming insurer
 426 as security for the payment of obligations thereunder, if the
 427 security is held in the United States subject to withdrawal
 428 solely by, and under the exclusive control of, the ceding
 429 insurer, or, in the case of a trust, held in a qualified United
 430 States financial institution, as defined in paragraph (6)(b)
 431 ~~(5)(b)~~. This security may be in the form of:

432 (a) Cash in United States dollars;

433 (b) Securities listed by the Securities Valuation Office of
 434 the National Association of Insurance Commissioners and
 435 qualifying as admitted assets pursuant to part II of chapter

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436 625;

437 (c) Clean, irrevocable, unconditional letters of credit,
 438 issued or confirmed by a qualified United States financial
 439 institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no
 440 later than December 31 of the year for which the filing is made,
 441 and in the possession of, or in trust for, the ceding company on
 442 or before the filing date of its annual statement; or

443 (d) Any other form of security acceptable to the office.

444 (6)(a) ~~(5)(a)~~ For purposes of paragraph (5)(c) ~~(4)(c)~~
 445 regarding letters of credit, a "qualified United States
 446 financial institution" means an institution that:

447 1. Is organized or, in the case of a United States office
 448 of a foreign banking organization, is licensed under the laws of
 449 the United States or any state thereof;

450 2. Is regulated, supervised, and examined by United States
 451 or state authorities having regulatory authority over banks and
 452 trust companies; and

453 3. Has been determined by either the office or the
 454 Securities Valuation Office of the National Association of
 455 Insurance Commissioners to meet such standards of financial
 456 condition and standing as are considered necessary and
 457 appropriate to regulate the quality of financial institutions
 458 whose letters of credit will be acceptable to the office.

459 (12) ~~(11)~~

460 (b) The summary statement must be signed and attested to by
 461 either the chief executive officer or the chief financial
 462 officer of the reporting insurer. In addition to the summary
 463 statement, the office may require the filing of any supporting
 464 information relating to the ceding of such risks as it deems

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465 necessary. If the summary statement prepared by the ceding
466 insurer discloses that the net effect of a reinsurance treaty or
467 treaties (or series of treaties with one or more affiliated
468 reinsurers entered into for the purpose of avoiding the
469 following threshold amount) at any time results in an increase
470 of more than 25 percent to the insurer's surplus as to
471 policyholders, then the insurer shall certify in writing to the
472 office that the relevant reinsurance treaty or treaties comply
473 with the accounting requirements contained in any rule adopted
474 by the commission under subsection (15) ~~(14)~~. If such
475 certificate is filed after the summary statement of such
476 reinsurance treaty or treaties, the insurer shall refile the
477 summary statement with the certificate. In any event, the
478 certificate must state that a copy of the certificate was sent
479 to the reinsurer under the reinsurance treaty.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 738

INTRODUCER: Senator Baxley

SUBJECT: Bicycle Operation Regulations

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Vickers	TR	Favorable
2. Hackett	Ryon	CA	Favorable
3. Price	Phelps	RC	Pre-meeting

I. Summary:

SB 738 amends a current prohibition against a person operating a bicycle other than upon or astride a permanent and regular attached seat, providing that the prohibition applies unless the bicycle was designed by the manufacturer to be ridden without a seat. Under the bill, a person riding a bicycle manufactured without a seat would not be subject to an existing penalty for a violation of the prohibition.

The bill is expected to present an unknown but likely insignificant negative fiscal impact to state and local revenues, and an insignificant positive fiscal impact to riders of bicycles manufactured to be ridden without a seat.

The bill takes effect July 1, 2021.

II. Present Situation:

While the “traditional” bicycle that comes to mind may be of the two-tandem-wheel variety with an attached seat, other devices generally recognized as bicycles, such as elliptical bicycles, may be sold with two tandem wheels or with two front or two rear wheels¹ and may be manufactured *without* an attached seat for a rider’s use. For these, no seat is attached by the manufacturer, as the rider stands while propelling the bicycle by human power.

¹ See *Bicycling, Take Your Low-Impact Workout Outside with an Elliptical Bike*, to view examples of three differently-configured elliptical bikes, available at <https://www.bicycling.com/bikes-gear/g23895814/elliptical-bike/> (retrieved February 16, 2021).

Attached Bicycle Seats

Florida Bicycle Law

Section 316.003(4), F.S., defines the term “bicycle” to mean “every vehicle² propelled solely by human power, having two tandem wheels, *and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.*³ The term does not include a scooter or similar device.” An elliptical bicycle, for example, appears to meet the definition.

Section 316.2065(2), F.S., however, prohibits a person operating a bicycle from riding *other than upon or astride a permanent and regular seat attached thereto.*⁴ At least one rider has reportedly been cited for a violation of this provision while riding an elliptical bicycle.⁵

Section 316.2065(19), F.S., provides that a violation of that section is a noncriminal traffic infraction, which is punishable as a pedestrian violation, and subjects a violator to a \$15 penalty,⁶ plus court costs, portions of which are distributed monthly to various entities and trust funds.⁷

California Bicycle Law

Research identifies one other state, California,⁸ with a statute that includes the same prohibition against riding other than upon or astride a permanent and regular seat attached to the bicycle, but *also* provides an exception when the bicycle was designed by the manufacturer to be ridden without a seat.

While use of elliptical bicycles may not be as prevalent as use of “traditional” bicycles, elliptical bicycles are readily available on the market. However, a person operating an elliptical bicycle is explicitly in violation of current Florida law if the bicycle has no attached seat for the rider’s use.

III. Effect of Proposed Changes:

The bill amends s. 316.2065(2), F.S., to require a person operating a bicycle to ride upon or astride a permanent and regular attached seat, unless the bicycle was designed by the manufacturer to be ridden without a seat. Thus, under the bill, persons riding a bicycle manufactured to be ridden without a seat will no longer be subject to the \$15 penalty.

² The term “vehicle” is defined in s. 316.003(103), F.S., as “every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks.”

³ Emphasis added.

⁴ Emphasis added.

⁵ See email to committee staff, January 29, 2021 (on file in the Senate Community Affairs Committee).

⁶ Section 318.18(1)(b), F.S.

⁷ Revenues for a violation of the current prohibition against riding other than on or astride a seat attached to a bicycle are distributed monthly in portions specified in s. 318.21, F.S., to various local entities (such as court clerks, and counties and municipalities in which a violation occurs) and various state trust funds (such as the Child Welfare Training Trust Fund, Grants and Donations Trust Fund, and Emergency Medical Services Trust Fund).

⁸ See California Vehicle Code, VEH s. 21204.

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:

An insignificant positive fiscal impact is expected for riders of bicycles manufactured to be ridden without a seat, as such riders would no longer be subject to the applicable penalty.

C. Government Sector Impact:

The number of citations previously issued for violations of the prohibition is unknown; thus, the extent of any reduction to state and local revenues resulting from the exception provided under the bill is unknown. However, any revenue reduction is likely insignificant.

The Florida Department of Highway Safety and Motor Vehicles advises it will incur insignificant expenses associated with updating the Florida Driver's Handbook and Uniform Traffic Infraction guide, as well as training law enforcement personnel on the bill's provisions.⁹

⁹ See Department of Highway Safety and Motor Vehicles Legislative Bill Analysis for 2020 SB 738.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends s. 316.2065 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.



336198

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 16 and 17
insert:

Section 2. Subsection (1) of section 316.20655, Florida
Statutes, is amended to read:

316.20655 Electric bicycle regulations.—

(1) Except as otherwise provided in this section, an
electric bicycle or an operator of an electric bicycle shall be
afforded all the rights and privileges, and be subject to all of
the duties, of a bicycle or the operator of a bicycle, including



336198

s. 316.2065. An electric bicycle is a vehicle to the same extent as a bicycle. However, this section may not be construed to prevent a local government, through the exercise of its powers under s. 316.008, from adopting an ordinance governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction; ~~or~~ to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an electric bicycle on a bicycle path, multiuse path, or trail network; or to prevent a municipality, county, or agency of the state having jurisdiction over a beach as defined in s. 161.54(3) or a dune as defined in s. 161.54(4) from restricting or prohibiting the operation of an electric bicycle on such beach or dune.

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

And the title is amended as follows:

Delete line 5

and insert:

upon or astride a seat attached thereto; amending s.
316.20655, F.S.; revising construction relating to
electric bicycle regulations; providing an

By Senator Baxley

12-01100-21

2021738__

A bill to be entitled

An act relating to bicycle operation regulations;
amending s. 316.2065, F.S.; providing an exception to
the requirement that a person operating a bicycle ride
upon or astride a seat attached thereto; providing an
effective date.

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

Section 1. Subsection (2) of section 316.2065, Florida
Statutes, is amended to read:

316.2065 Bicycle regulations.—

(2) A person operating a bicycle may not ride other than
upon or astride a permanent and regular seat attached thereto
unless the bicycle was designed by the manufacturer to be ridden
without a seat.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 752

INTRODUCER: Senator Gruters

SUBJECT: Public Defender Duties

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. <u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3. <u>Ravelo</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 752 clarifies that a court may not appoint a public defender as co-counsel on a case where the defendant is also represented by private counsel. However, the bill does not prohibit the appointment of a public defender in situations where a defendant is no longer represented by private counsel.

The bill takes effect July 1, 2021.

II. Present Situation:

Every person has the right to legal representation in a criminal proceeding. While a person may hire a private attorney, the Due Process Clause of the 14th Amendment to the United States Constitution requires the appointment of an attorney for those who otherwise cannot afford legal representation in a criminal proceeding where a loss of liberty, such as jail, is at stake.¹ In Florida, indigent criminal defendants may be appointed legal representation from the Public Defender, the Regional Conflict Counsel, or a private court-appointed attorney. Generally, the courts appoint the public defender to represent an indigent defendant, but may appoint the Regional Conflict Counsel or a private court-appointed attorney if the Public Defender or Regional Conflict Counsel has a conflict of interest.²

The Public Defender is a constitutional officer elected in each judicial circuit to represent the indigent in criminal proceedings.³ Each public defender appoints assistant public defenders to assist in these duties and may only represent indigent clients upon appointment from a court

¹ *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (“[I]n our adversary system of criminal justice, any person ... who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.”).

² Sections 27.511(5) and 27.40(1) and (2)(a), F.S.

³ FLA. CONST. art. V, s. 18.

order. The courts are prohibited from appointing a public defender to someone who is not indigent, even on a temporary basis.⁴ A public defender may represent any person who is determined to be indigent and is:

- Under arrest for, or charged with, a felony;
- Under arrest for, or charged with:
 - A misdemeanor;
 - A violation of ch. 316, F.S., punishable by imprisonment;
 - Criminal contempt; or
 - A violation of a special law or county or municipal ordinance ancillary to a state charge, or if not ancillary to a state charge, only if the public defender contracts with the county or municipality to provide representation pursuant to ss. 27.54 and 125.69, F.S.;
- Alleged to be a delinquent child pursuant to a petition filed before a circuit court;
- The subject of a petition to be involuntarily placed as a mentally ill person under part I of ch. 394, F.S. (Baker Act), involuntarily placed as a sexually violent predator under part V of ch. 394, F.S. (Jimmy Ryce Act), or involuntarily admitted to residential services as a person with developmental disabilities under ch. 393, F.S.;
- Convicted and sentenced to death, for purposes of handling an appeal to the Supreme Court; or
- Appealing any other civil or criminal matter previously listed.⁵

The clerk of the court is responsible for determining indigent status of someone seeking to be represented by the Public Defender.⁶ Indigent status can be based on either a taxable income equal to or below 200 percent of the federal poverty guidelines,⁷ or on the utilization of any form of TANF, poverty related veteran's benefits, or SSI benefits.⁸ There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.⁹

A person seeking the appointment of the public defender based on the inability to afford private counsel must complete an application of indigent status with the clerk of the court. The person must provide the following information:

- Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.
- Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public

⁴ Section 27.51(2), F.S.

⁵ Sections 27.51(1), 394.4598(1), and s. 394.916, F.S.

⁶ Section 27.52(2), F.S.

⁷ Based on the 2021 guidelines, an applicant under this scenario would qualify if his or her income were equal to or below \$25,760 (200% of \$12,880) for a single person household, adding \$9,080 for each additional person in the household. U.S. Dept. of Health and Human Service, *HHS Poverty Guidelines for 2021*, <https://aspe.hhs.gov/poverty-guidelines> (last visited March 3, 2021).

⁸ Section 27.52(2)(a), F.S. "TANF" is the Temporary Assistance for Needy Families Program. "SSI" is the Supplemental Security Income program.

⁹ Section 27.52(2)(a)1., F.S.

or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rent, trusts, and gifts.

- Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.
- All liabilities and debts.
- The amount of any bail paid for the applicant's release from incarceration and the source of the funds.¹⁰

Indigent for Costs

A court may declare a person who is represented by a private attorney but who is also eligible to be represented by the public defender to be indigent for costs.¹¹ If the court determines a person is indigent for costs, the person is eligible to have the State pay for certain due process services that are necessary to prepare a legal defense, such as the costs of transcribing depositions, witnesses, mental health professionals, travel expenses, and legal research.¹² The Justice Administrative Commission (JAC) pays for the costs for these services.¹³

Appointment of the Public Defender as Co-Counsel

On December 16, 2010, in Hillsborough County (13th Judicial Circuit), Michael Keetley was indicted on two counts of first degree murder and four counts of attempted first degree murder, and the State filed a notice of intent to seek the death penalty in 2011.¹⁴ Keetley was represented by a series of private attorneys, beginning on December 16, 2010, when a private attorney filed a notice of appearance on Keetley's behalf.¹⁵ In October 2014, one of Keetley's private attorneys moved to have Keetley declared indigent for costs. At that point, Keetley's parents, who had paid for the private attorneys, had incurred approximately \$200,000 in fees for their services. The trial court granted the motion.¹⁶

On April 14, 2017, the trial court granted a motion for Keetley's private attorney to appoint penalty-phase counsel and appointed the Public Defender to serve as co-counsel.¹⁷ Although the Public Defender did not file a response to the motion, the JAC appeared at the hearing telephonically and objected that it did not have statutory authority to pay for court-appointed

¹⁰ Section 27.52(1)(a), F.S.

¹¹ Section 27.52(5), F.S.

¹² Sections 27.52(5), 29.006, and 29.007, F.S.

¹³ Section 27.52(5)(f), F.S. The JAC provides administrative and financial services on behalf of the offices of the State Attorney, Public Defender, Criminal Conflict and Civil Regional Counsel, Capital Collateral and Regional Counsel, the Guardian Ad Litem Program, private attorneys who have been appointed to represent indigent persons, and expenses for persons who have been determined to be indigent for costs. Section 43.16, F.S.

¹⁴ *Holt for Thirteenth Judicial Circuit, Hillsborough County v. Keetley*, 250 So.3d 206 (Fla. 2d DCA 2018).

¹⁵ *Id.* at 207-209.

¹⁶ *Id.* at 207.

¹⁷ *Id.* at 208. This was a renewed motion. In a previous motion for appointment of penalty-phase counsel, which was denied, Keetley's private attorney had requested co-counsel "on the grounds that it is 'standard practice in death penalty cases, for a defendant to be represented by at least two lawyers' and that she did not feel that she could 'prepare for both first phase motions and trial and competently and effectively prepare motions, conduct hearings and arguments on the penalty phase issues.'" *Id.*

counsel. The JAC’s objection was noted by the trial court in its order. Subsequently, “the Public Defender moved for reconsideration, arguing, in sum, ‘There is no provision in Florida law that allows the appointment of the Office of the Public Defender when a defendant has retained counsel.’ At the hearing—at which an attorney from the Office of the Public Defender did appear—the trial court orally denied the motion for reconsideration. No written order was rendered.”¹⁸ Thereafter, the Public Defender filed a petition for a writ of certiorari but the appellate court refused to issue a ruling on the merits of the case because the Public Defender failed to establish the prerequisites to invoke the appellate court’s certiorari jurisdiction.¹⁹

In 1983, the First District Court of Appeal held that a public defender cannot be appointed as co-counsel in a case where a defendant has already retained private counsel.²⁰

III. Effect of Proposed Changes:

The bill amends s. 27.52, F.S., to clarify that a court may not appoint a public defender as co-counsel on a case where the defendant is also represented by private counsel. However, the bill does not prohibit the appointment of a public defender in situations where a defendant is no longer represented by private counsel.

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 State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁸ *Id.* at 209.

¹⁹ *Id.* at 209-210.

²⁰ In *Behr v. Gardner*, 442 So. 2d 980, 982 (Fla. 1st DCA 1983) (on motion for rehearing), the court found that the appointment of a public defender “is to ensure that indigent defendants are afforded the opportunity for representation by counsel [T]his purpose is not furthered by appointing the public defender to represent a defendant who, although indigent, is already represented by a privately retained attorney.”

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will prevent a court from appointing the public defender as a co-counsel to a case where the defendant has retained a private defense counsel. Although this situation appears to have rarely occurred, the bill will prevent the resources of public defenders from being used in cases where the defendant is represented by a private defense counsel.

A defendant who retains a private defense counsel may still be declared indigent for costs and eligible to have the state pay for certain due process services that are necessary to prepare a legal defense, such as the costs of transcribing depositions, witnesses, mental health professionals, travel expenses, and legal research.²¹ Thus, services that could have been provided by the public defender as co-counsel may still otherwise be provided with state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 27.51 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.

²¹ Section 27.52(5)(f), F.S.

B. Amendments:

None.

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

By Senator Gruters

23-00995-21

2021752__

A bill to be entitled

An act relating to public defender duties; amending s. 27.51, F.S.; specifying additional circumstances under which a public defender may not be appointed to represent a defendant; providing an effective date.

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

Section 1. Subsection (2) of section 27.51, Florida Statutes, is amended to read:

27.51 Duties of public defender.—

(2) The court may not appoint the public defender to represent, even on a temporary basis, any person who is not indigent. If a defendant has retained private counsel, the court may not appoint the public defender to represent that defendant simultaneously on the same case. The court, however, may appoint private counsel in capital cases as provided in ss. 27.40 and 27.5303.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 776

INTRODUCER: Criminal Justice Committee and Senator Gainer

SUBJECT: Racketeering

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Fav/CS
2. Anderson	Rogers	EN	Favorable
3. Erickson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 776 amends the definition of “racketeering activity” in the Florida RICO (Racketeer Influenced and Corrupt Organization) Act to include violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes. Chapter 379, F.S., and Title 68, F.A.C., are implemented by the Florida Fish and Wildlife Conservation Commission (FWC). The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

The FWC estimates the bill will have an indeterminate impact on the commission. The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact, meaning an increase of 10 or fewer prison beds. See Section V. Fiscal Impact.

The bill takes effect upon becoming a law.

II. Present Situation:

Under Article IV, section 9, of the State Constitution, the FWC exercises the regulatory and executive powers of the state concerning wild animal life, freshwater aquatic life, and marine life.¹ The FWC implements ch. 379, F.S., and rules adopted in Title 68,² F.A.C.³

License fees for taking wild animal life, freshwater aquatic life, and marine life and penalties for violating FWC regulations are prescribed by general law.⁴ Further, the FWC's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing are provided by law.⁵ The Legislature may also enact laws in aid of the FWC that are not inconsistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting or fishing.⁶

Section 379.401, F.S., details FWC's four-tier system for penalties and violations, civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits.⁷ Level One violations are considered the least serious while Level Four violations are considered the most serious.⁸

Level Two Violations

Examples of a Level Two violation include:

- Violating rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Violating rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Violating rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals;
- Violating rules or orders of the commission relating to the use of dogs for the taking of wildlife;
- Violating rules or orders of the commission which are not otherwise classified; and
- Violating rules or orders of the commission prohibiting the unlawful use of traps, unless otherwise provided by law.⁹

¹ FLA. CONST. art. IV, s. 9.

² Title 68 is also referred to as "chapter 68."

³ "The rules of the FWC have the force of a legislative act, and the Legislature is prohibited from adopting statutes that conflict with those rules." *Florida Fish and Wildlife Conservation Commission v. Daws*, 256 So.3d 907, 917 (Fla. 1st DCA 2018) (citations omitted), review denied, 2018 WL 6605838 (Fla. 2018).

⁴ FLA. CONST. art. IV, s. 9.

⁵ *Id.*

⁶ *Id.*

⁷ Information in this analysis relating to level violations and penalties was reproduced from *Bill Analysis and Fiscal Impact Statement* (CS/CS/SB 688) (Feb. 20, 2020), Florida Senate, available at <https://www.flsenate.gov/Session/Bill/2020/688/Analyses/2020s00688.rc.PDF> (last visited Feb. 8, 2021).

⁸ Section 379.401, F.S.

⁹ Section 379.401(2)(a), F.S.

The penalties for Level Two violations are as follows:

Level Two Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	2 nd Degree Misdemeanor ¹⁰	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ¹¹	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ¹²	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ¹³	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

Level Three Violations

Examples of a Level Three violation include:

- The illegal sale or possession of alligators;
- The taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked; and
- The illegal taking and possession of deer and wild turkey.¹⁴

The penalties for a Level Three violation are as follows:

Level Three Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	1 st Degree Misdemeanor ¹⁵	Max: \$1,000 Max: one year	None
Second offense within 10 years of a previous Level Three violation (or higher)	1 st Degree Misdemeanor ¹⁶	Min: \$750; Max: \$1,000 Max: one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1 st Degree Misdemeanor	Mandatory \$1,000 ¹⁷ Max: one year	May not acquire license or permit for five years

¹⁰ Section 379.401(2)(b)1., F.S.

¹¹ Section 379.401(2)(b)2., F.S.

¹² Section 379.401(2)(b)3., F.S.

¹³ Section 379.401(2)(b)4., F.S.

¹⁴ Section 379.401(3), F.S.

¹⁵ Section 379.401(3)(b)1., F.S.

¹⁶ Section 379.401(3)(b)2., F.S.

¹⁷ Section 379.401(3)(b)3., F.S.

Level Four Violations

Examples of a Level Four violation include:

- The making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission;
- The sale of illegally-taken deer or wild turkey;
- The unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs;
- The intentional killing or wounding of any species designated as endangered, threatened, or of special concern; and
- The killing of any Florida or wild panther.¹⁸

The penalties for Level Four Violations are as follows:

Level Four Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense ¹⁹	3 rd Degree Felony	Max: \$5,000 Max: Five Years	None

Florida RICO Act

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S.²⁰ “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.²¹

Section 895.03, F.S., provides that it is unlawful for any person:

- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²² to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.²³
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

¹⁸ Section 379.401(4)(a), F.S.

¹⁹ Section 379.401(4)(b), F.S.

²⁰ Section 895.01, F.S.

²¹ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s. 1961(1).

²² Section 895.02(2), F.S., defines an “unlawful debt” as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

²³ Section 895.02(3), F.S., defines “enterprise” as any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.²⁴

Section 895.04, F.S., provides that a conviction for engaging in the above activities results in a first degree felony.²⁵

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.²⁶

Trafficking in Wild Animal Life, Freshwater Aquatic Life, or Marine Life

The FWC describes the problem of trafficking in wild animal life, freshwater aquatic life, or marine life:

There is a significant black-market trade in Florida's wildlife, freshwater aquatic life, and marine life. This includes live wildlife and aquatic species, including captive wildlife, as well as eggs, products, and parts thereof. Trafficking in wild species is the fourth most profitable transnational crime behind the drug trade, arms trade, and human trafficking. Criminal organizations are often involved in more than one illegal trade.

Factors such as overexploitation/harvest, increased regulation, and global trends, mean that law enforcement agencies must look broadly at the variety of wildlife and aquatic life subject to exploitation and illegal commercialization. Marine life species targeted for trafficking has included corals, live rock, sea cucumbers, reef fish, shrimp, ornamental aquarium fish, and lobsters. Wildlife targeted for trafficking has included live animals such as freshwater turtles, federal Endangered Species Act (ESA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) listed species (i.e., sharks, sea turtles [including eggs]) and parts thereof, cervids, captive wildlife (monkeys, tigers, venomous/non venomous reptiles and tegus), black bears (gall bladders, paws), and alligators (including eggs). Wildlife, freshwater aquatic life, and marine life are trafficked for many reasons; the species or parts thereof that are being trafficked are usually determined by the consumer demand at the time. For these reasons, it is important that anti-racketeering efforts are not limited to one category of animal life or type of species.

Species listed under the ESA and CITES, and Florida's listed endangered and threatened species, are of particular concern as illegal collection and trafficking are significant factors in the further decline of these species. However, less regulated species are often some of the most exploited and are harvested in large numbers. Illegal wildlife markets

²⁴ Section 895.03(4), F.S.

²⁵ A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁶ Section 895.05(2), F.S.

sometimes follow a “boom and bust” cycle. Wildlife, freshwater aquatic life, and marine life will be exploited until the species is over harvested and declines to the extent the species are difficult to acquire or special protections are placed on the species. Once one species has followed this “boom and bust” cycle, markets will shift to a new species and so on.

In addition, trafficking involves offenses beyond illegal take or sale of species. Efforts to launder trafficked wildlife and aquatic life may involve the falsification of records, licenses, and documents and concealment of sources of acquisition as related crimes that further the criminal enterprise.²⁷

Prosecution of Trafficking in Wild Animal Life, Freshwater Aquatic Life, or Marine Life

In October of 2020, the FWC announced that a group of suspects were charged with racketeering, money laundering, scheming to defraud, “and other organized criminal laws involving an elaborate organized enterprise to smuggle Florida’s wildlife to interstate and international buyers.”²⁸ The smuggling involved illegally trapping flying squirrels, but FWC investigators also learned that the “Florida suspects were dealing in multiple species of poached animals. Protected freshwater turtles and alligators were illegally taken and laundered through other seemingly legitimate licensed businesses. Documents were falsified concealing the true source of the wildlife.”²⁹

The FWC notes some of the problems arising from current prosecution of trafficking in wild animal life, freshwater aquatic life, or marine life:

Individuals associated with wildlife trafficking are difficult to deter [from] exploiting fish and wildlife without the appropriate charges. While there are a variety of laws that protect wildlife and even a few that protect against the illegal sale of wildlife in Florida, the current laws protecting against the illegal tak[ing], possession, purchase, and sale of wildlife and aquatic life are primarily misdemeanors and typically only result in small fines and probation when traffickers are convicted. These laws do little to affect the criminal organizations engaged in trafficking.

To combat organized crime, Florida’s RICO (Racketeer Influence and Corrupt Organization) Act makes it unlawful for a person to engage in a pattern of criminal activity to acquire, establish, operate, maintain, or control, or be associated with or employed by an enterprise, or conspire to do so. Currently, there are no predicate offenses under Florida’s RICO Act specifically related to the illegal trafficking of wildlife and aquatic life.³⁰

²⁷ Florida Fish and Wildlife Conservation Commission (FWC), *Senate Bill 776 Legislative Bill Analysis* (Feb. 8, 2021), available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 247).

²⁸ FWC, *FWC uncovers a transnational wildlife trafficking operation in Florida* (Oct. 19, 2020), <https://myfwc.com/news/all-news/trafficking-case-1020/> (last visited Feb. 19, 2021).

²⁹ *Id.*

³⁰ FWC, *Senate Bill 776 Legislative Bill Analysis* (Feb. 8, 2021), available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 248).

The Office of Statewide Prosecution has assisted the FWC in prosecution of theft of alligators and alligator eggs by prosecuting these acts under RICO.³¹ The RICO prosecution relies on theft, a predicate RICO offense.³² However, the office notes that defense counsel has challenged the prosecution, “arguing there could be no theft of wildlife from the State as the State did not own the wildlife. The case is currently being challenged on appeal.”³³

The FWC has provided the following reasons for adding violations of ch. 379, F.S., and Title 68, F.A.C., and related crimes, as predicate Florida RICO offenses:

The bill “does not enlarge any crimes related to wildlife or aquatic life, but makes these existing crimes prosecutable under RICO. The inclusion of crimes under Chapter 379, F.S., and Title 68, F.A.C., as predicate offenses under RICO would provide a powerful tool in the effort to combat wildlife trafficking and disrupt a highly profitable illegal trade. Prosecuting these cases under RICO would enable the State of Florida to pursue asset forfeiture which would greatly undermine the profitability of these criminal enterprises. Florida’s legitimate businesses and its citizens who rely on natural resources for a living as well as recreational experiences would see a positive impact. The disruption of wildlife trafficking would also assist with the prevention and mitigation of communicable infectious diseases that originate from wildlife. Finally, the amendment to RICO would allow Florida to address wildlife trafficking crimes that do not have a federal nexus.”³⁴

III. Effect of Proposed Changes:

The bill amends the definition of “racketeering activity” in s. 895.02(8), F.S., of the Florida RICO Act to include violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life,³⁵ and related crimes. Chapter 379, F.S., and Title 68, F.A.C., are implemented by the FWC. The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

³¹ *RE: FWC Proposed Legislation* (undated memo), Kelly A. McKnight, Assistant Statewide Prosecutor, Office of Statewide Prosecution, Office of the Attorney General, available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 253).

Section 895.02(8)(a)32., F.S.

³² Section 895.02(8)(a)32., F.S.

³³ *RE: FWC Proposed Legislation* (undated memo), Kelly A. McKnight, Assistant Statewide Prosecutor, Office of Statewide Prosecution, Office of the Attorney General, available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 253).

³⁴ FWC, *Senate Bill 776 Legislative Bill Analysis* (Feb. 8, 2021), available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 248).

³⁵ The FWC notes that “[i]t is critical that the amendment’s language address the enumerated crimes under both Chapter 379, F.S., and Title 68, F.A.C. There are many crimes related to wildlife trafficking that are offenses under the Commission’s regulations, but that do not have a companion statutory offense under Chapter 379, F.S. Violations of these offenses have a prescribed penalty in statute, but the offense itself is articulated and charged under the regulations of Title 68, F.A.C. In addition, criminal organizations often utilize related crimes (i.e., mislabeling, falsifying documents or records, hiding sources of acquisitions, etc.) to conceal and further illegal activity. For this reason, prosecutors need the ability to pursue racketeering charges for related crimes under the laws and rules of the Commission.” *Id.*

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, s. 18, of the State 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 FWC estimates the bill will have an indeterminate impact on the commission.³⁶

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact, meaning an increase of 10 or fewer prison beds.³⁷

The EDR provides the following additional information relevant to its estimate:

³⁶ *Id.*

³⁷ The EDR estimate requested by the Senate Committee on Criminal Justice is available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 256).

Per [Florida Department of Law Enforcement or] FDLE, there were 436 misdemeanor arrests in CY 2019, with 114 guilty/convicted and 61 adjudications withheld under Chapter 379, and there were 337 arrests in CY 2020, with 48 guilty/convicted and 40 adjudications withheld. For felony violations, in CY 2019, there were 37 arrests, with 28 guilty/convicted and 14 adjudications withheld. In CY 2020, there were 80 arrests, with 4 guilty/convicted and 8 adjudications withheld. Per [Department of Corrections or] DOC, there was one new commitment to prison in FY 18-19 and one new commitment to prison in FY 19-20 for felony violations associated with Chapter 379.

Per DOC, in FY 18-19, there were 82 new commitments to prison under s. 895.03, F.S. In FY 19-20, there were 58 new commitments. Given that under current statute there are a large number of offenses where these felonies could apply, including offenses that have a high volume of commitments each year, the additions of Chapter 379 and violations of Title 68 are not expected to have a significant impact on prison beds.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 895.02 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 Criminal Justice on February 16, 2021:

The committee substitute revises the description of predicate offenses being added to the definition of “racketeering activity” in the Florida RICO Act to indicate that “racketeering activity” includes violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

- B. **Amendments:**

None.

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

³⁸ *Id.*

By the Committee on Criminal Justice; and Senator Gainer

591-02152-21

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A bill to be entitled

An act relating to racketeering; amending s. 895.02, F.S.; revising the definition of the term "racketeering activity" to include certain actions relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 895.02, Florida Statutes, is amended, and a new paragraph (c) is added to that subsection, to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Chapter 379, relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

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4. Section 403.727(3)(b), relating to environmental control.

5.4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

6.5. Section 414.39, relating to public assistance fraud.

7.6. Section 440.105 or s. 440.106, relating to workers' compensation.

8.7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

9.8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

10.9. Section 499.0051, relating to crimes involving contraband, adulterated, or misbranded drugs.

11.10. Part IV of chapter 501, relating to telemarketing.

12.11. Chapter 517, relating to sale of securities and investor protection.

13.12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

14.13. Chapter 550, relating to jai alai frontons.

15.14. Section 551.109, relating to slot machine gaming.

16.15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

17.16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

18.17. Chapter 562, relating to beverage law enforcement.

19.18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare

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59 arrangement, or s. 626.902(1)(b), relating to representing or
 60 aiding an unauthorized insurer.

61 ~~20.19.~~ Section 655.50, relating to reports of currency
 62 transactions, when such violation is punishable as a felony.

63 ~~21.20.~~ Chapter 687, relating to interest and usurious
 64 practices.

65 ~~22.21.~~ Section 721.08, s. 721.09, or s. 721.13, relating to
 66 real estate timeshare plans.

67 ~~23.22.~~ Section 775.13(5)(b), relating to registration of
 68 persons found to have committed any offense for the purpose of
 69 benefiting, promoting, or furthering the interests of a criminal
 70 gang.

71 ~~24.23.~~ Section 777.03, relating to commission of crimes by
 72 accessories after the fact.

73 ~~25.24.~~ Chapter 782, relating to homicide.

74 ~~26.25.~~ Chapter 784, relating to assault and battery.

75 ~~27.26.~~ Chapter 787, relating to kidnapping or human
 76 trafficking.

77 ~~28.27.~~ Chapter 790, relating to weapons and firearms.

78 ~~29.28.~~ Chapter 794, relating to sexual battery, but only if
 79 such crime was committed with the intent to benefit, promote, or
 80 further the interests of a criminal gang, or for the purpose of
 81 increasing a criminal gang member's own standing or position
 82 within a criminal gang.

83 ~~30.29.~~ Former s. 796.03, former s. 796.035, s. 796.04, s.
 84 796.05, or s. 796.07, relating to prostitution.

85 ~~31.30.~~ Chapter 806, relating to arson and criminal
 86 mischief.

87 ~~32.31.~~ Chapter 810, relating to burglary and trespass.

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88 ~~33.32.~~ Chapter 812, relating to theft, robbery, and related
 89 crimes.

90 ~~34.33.~~ Chapter 815, relating to computer-related crimes.

91 ~~35.34.~~ Chapter 817, relating to fraudulent practices, false
 92 pretenses, fraud generally, credit card crimes, and patient
 93 brokering.

94 ~~36.35.~~ Chapter 825, relating to abuse, neglect, or
 95 exploitation of an elderly person or disabled adult.

96 ~~37.36.~~ Section 827.071, relating to commercial sexual
 97 exploitation of children.

98 ~~38.37.~~ Section 828.122, relating to fighting or baiting
 99 animals.

100 ~~39.38.~~ Chapter 831, relating to forgery and counterfeiting.

101 ~~40.39.~~ Chapter 832, relating to issuance of worthless
 102 checks and drafts.

103 ~~41.40.~~ Section 836.05, relating to extortion.

104 ~~42.41.~~ Chapter 837, relating to perjury.

105 ~~43.42.~~ Chapter 838, relating to bribery and misuse of
 106 public office.

107 ~~44.43.~~ Chapter 843, relating to obstruction of justice.

108 ~~45.44.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
 109 or s. 847.07, relating to obscene literature and profanity.

110 ~~46.45.~~ Chapter 849, relating to gambling, lottery, gambling
 111 or gaming devices, slot machines, or any of the provisions
 112 within that chapter.

113 ~~47.46.~~ Chapter 874, relating to criminal gangs.

114 ~~48.47.~~ Chapter 893, relating to drug abuse prevention and
 115 control.

116 ~~49.48.~~ Chapter 896, relating to offenses related to

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financial transactions.

~~50.49.~~ Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

~~51.50.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(c) Any violation of Title 68, Florida Administrative Code, relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Criminal
and Civil Justice
Criminal Justice
Ethics and Elections
Transportation

SENATOR GEORGE B. GAINER
2nd District

March 2, 2021

Re: SB 776

Dear Chair Passidomo,

I am respectfully requesting Senate Bill 776, related to Racketeering, be placed on the agenda for the next meeting of the Committee on Rules.

This bill does not enlarge any crimes related to wildlife or aquatic life, but makes these existing crimes prosecutable under RICO (Racketeer Influence and Corrupt Organization). The inclusion of crimes under Chapter 379, F.S., and Title 68, F.A.C., as predicate offenses under RICO would provide a powerful tool in the effort to combat wildlife trafficking and disrupt a highly profitable illegal trade. Prosecuting these cases under RICO would enable the State of Florida to pursue asset forfeiture which would greatly undermine the profitability of these criminal enterprises. Florida's legitimate businesses and its citizens who rely on natural resources for a living as well as recreational experiences would see a positive impact. The disruption of wildlife trafficking would also assist with the prevention and mitigation of communicable infectious diseases that originate from wildlife. Finally, the amendment to RICO would allow Florida to address wildlife trafficking crimes that do not have a federal nexus.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in cursive script, appearing to read "George B. Gainer".

Senator George Gainer
District 2

Cc: John Phelps, Cynthia Futch, Tom Yeatman, Chad Boole, Sandra Mummert, Rebecca Kokkinos

REPLY TO:

- ☐ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- ☐ Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454
- ☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

3/18/21

Meeting Date

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

776

Bill Number (if applicable)

Topic Racketeering

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title Stats dir.

Address 1206 Walter Dr.

Phone 850 508 1001

Street

Tallahassee

City

State

Zip

Email KMacFall@hsos.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

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

3/18/21

Meeting Date

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

776

Bill Number (if applicable)

Topic

Racketeering

Amendment Barcode (if applicable)

Name

Jessica Crawford

Job Title

Legislative Affairs Director

Address

620 S. Meridian St.

Street

Tallahassee

City

FL

State

52399

Zip

Phone

Jessica.Crawford@myfwc.com

Email

850-487-3795

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida Fish & Wildlife Conservation Commission

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

3/18/21

Meeting Date

776

Bill Number (if applicable)

Topic Racketeering

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director of Government Relations

Address 400 S. Monroe St.

Phone

Street

Tallahassee

FL

32399

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of the Attorney General

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 Rules

BILL: CS/CS/SB 890

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Hooper

SUBJECT: Use of Electronic Databases

DATE: March 18, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Fav/CS
2. Proctor	Vickers	TR	Favorable
3. Stokes	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 890 amends s. 119.0712, F.S., providing that any person who uses or releases information contained in the Driver and Vehicle Information Database (DAVID) for a purpose not specifically authorized by law commits a noncriminal infraction, punishable by a fine not exceeding \$2,000.

This bill amends s. 943.125, F.S., providing that the law enforcement accreditation program must address access to and use of personal identification information, as defined in s. 817.568(1)(f), F.S., contained in electronic databases.

This bill creates ss. 943.1719 and 943.17191, F.S., requiring the Criminal Justice Standards and Training Commission (CJSTC) to provide training on the authorized access to and use of personal identification information contained in electronic databases used by a law enforcement officer (LEO) in his or her official capacity. This training must be part of the curriculum required for initial certification of a LEO, and as part of the 40 hours of required instruction for continued employment or appointment as an officer. The training under ss. 943.1719 and 943.17191, F.S., must at minimum include:

- The proper use and limitations on use of electronic databases in a LEO's official capacity.
- The penalties associated with the misuse of such electronic databases.

This bill may have a negative fiscal impact on the Florida Department of Law Enforcement (FDLE). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2021.

II. Present Situation:

Electronic Databases

Government employees have access to various electronic databases. One database frequently accessed by government employees, including law enforcement, is the DAVID. The DAVID is a multifaceted database that affords immediate retrieval of driver and motor vehicle information that is indispensable for law enforcement and criminal justice officials.¹ Information contained in DAVID is confidential and protected under the federal Driver's Privacy Protection Act (DPPA). The DPPA provides that government agencies, including any court or law enforcement agency, may access this information in their official capacity to carry out their duties.²

There have been recent reports of government employees abusing their access to electronic databases.³ One government employee admitted to searching both his ex-wife and ex-girlfriend. Other examples of misuse of electronic databases include an officer who was suspended for two days after using DAVID to access addresses for Christmas cards, an officer who was fired for using DAVID to access information on a teen girl he was talking to and her parents, and an officer who resigned after being accused of using DAVID to search personal information of young women he met while on duty.⁴

Violation of Public Records Laws

It is state policy that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵ Chapter 119, F.S., provides various laws regarding public records, and public record exemptions.

Section 119.0712(2), F.S., provides that personal information, including highly restricted personal information, contained in a motor vehicle record is confidential pursuant to the federal DPPA. Such information may be released pursuant to that act. However, information received pursuant to the DPPA may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.⁶

Section 119.10, F.S., provides that any public officer who violates any provision of ch. 119, F.S., relating to public records, commits a noncriminal infraction, punishable by a fine of up to \$500.

¹ Florida Highway Safety and Motor Vehicles, *Driver and Vehicle Information Database (DAVID)*, available at [Driver And Vehicle Information Database \(DAVID\) - Florida Department of Highway Safety and Motor Vehicles \(flhsmv.gov\)](https://www.flhsmv.gov/Driver-And-Vehicle-Information-Database-(DAVID)-Florida-Department-of-Highway-Safety-and-Motor-Vehicles-(flhsmv.gov)) (last visited March 18, 2021).

² 18 U.S.C. s. 2721.

³ 10 Tampa Bay, *10 Investigates: Government workers abusing access to your private info face few consequences*, November 25, 2020, available at [Florida government workers abuse access to your private info | wtsp.com](https://www.wtsp.com/story/news/local/2020/11/25/florida-government-workers-abuse-access-to-your-private-info/) (last visited March 18, 2021).

⁴ *Id.*

⁵ Section 119.01(1), F.S.

⁶ Section 119.0712(2)(b), F.S.

A public officer who knowingly violates s. 119.07(1), F.S.,⁷ is subject to suspension and removal or impeachment and commits a first degree misdemeanor.^{8, 9}

Additionally, any person who willfully and knowingly violates any provisions of ch. 119, F.S., commits a first degree misdemeanor.¹⁰ Any person who willfully and knowingly violates s. 119.105, F.S.¹¹ commits a third degree felony.^{12, 13}

Misuse of an Electronic Database

Misuse of an electronic database is a violation of an officer's good moral character.¹⁴ An officer misuses an electronic database when he or she willfully and knowingly accesses an electronic database and uses the database to access restricted information for an illegitimate or personal purpose with bad intent. Bad intent may be demonstrated by:

- A pattern of misuse that demonstrates improper access or violations.
- If the violation occurred after the officer received agency or the Criminal Justice Standards and Training Commission (CJSTC) discipline for improperly accessing a computer database, or after the officer received formal training on the database(s) that includes provisions on the improper use of a database.
- The existence of a current or past non-amicable or otherwise contentious relationship between the officer and the subject of the query, or when the purpose of the query is to identify person(s) linked or associated to the relationship.
- Pre-textual queries based on age, race, sex, gender, or other personal identifying characteristics.
- Any additional action taken by the officer as a result of the information obtained from the query, for example, retaining, copying, or reproducing the information obtained from the query, or disseminating information not listed as confidential or exempt in ch. 119, F.S., obtained as a result of the query.¹⁵

Misuse of an electronic database, such as DAVID, may result in disciplinary action. The recommended penalty the CJSTC should impose for misuse of an electronic database ranges from probation to suspension.¹⁶ Additionally, misuse of an electronic database may subject an officer to the penalties in s. 119.10, F.S., including being charged with a first degree misdemeanor.

⁷ Section 119.07(1), F.S., relates to the responsibilities of custodians of public records.

⁸ Section 119.10(1)(a) and (b), F.S.

⁹ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 119.10(2)(a), F.S.

¹¹ Section 119.105, F.S., provides that police reports are public records unless otherwise made confidential and exempt. Nonexempt or nonconfidential police reports may be examined by any person. However, any person who has possession of exempt or confidential information in a police report may not commercially solicit the victims or relatives of the victims in the report and may not knowingly disclose such information for the purpose of solicitation. This does not apply to publication by any news media legally entitled to possess the information.

¹² Section 119.10(2)(b), F.S.

¹³ 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.

¹⁴ Rule 11B-27.0011, F.A.C.

¹⁵ Rule 11B-27.0011(4)(c)(14), F.A.C.

¹⁶ Rule 11B-27.005(5)(c), F.A.C.

The Criminal Justice Standards and Training Commission

The CJSTC's mission is to ensure that all citizens of Florida are served by criminal justice officers who are ethical, qualified, and well-trained.¹⁷ The CJSTC is comprised of:

- Three sheriffs.
- Three chiefs of police.
- Five LEOs who are neither sheriffs nor chiefs who are the rank of Sergeant or below.
- Two correctional officers, one of which is an administrator of a state correctional institution and one who is of the rank of sergeant or below.
- One Florida resident who falls into none of the above categories.
- The Attorney General or designated proxy.
- The Secretary of Department of Corrections or designated proxy.
- The Director of the Florida Highway Patrol.¹⁸

The primary responsibilities of the CJSTC are to:

- Establish uniform minimum standards for employment and training of full-time, part-time, and auxiliary law enforcement, and correctional and correctional probation officers.
- Establish and maintain officer training programs, curricula requirements, and certification of training schools and training school instructors.
- Certify officers who complete a Florida Basic Recruit Training Program, or who are diversely qualified through experience and training, and who meet minimum employment standards.
- Review and administer appropriate administrative sanctions in instances when an officer, a training school instructor, or a training school is found in violation of Florida Statutes and CJSTC standards.
- Promulgate rules and procedures to administer the requirements of ch. 943.085-943.257, F.S.
- Conduct studies of compensation, education, and training for the correctional, correctional probation, and law enforcement disciplines.
- Maintain a central repository of records of all certified officers.
- Conduct quarterly meetings to discuss issues and approve rules that relate to officer standards and training.
- Develop, maintain, and administer the State Officer Certification Examination for criminal justice officers.¹⁹

Accreditation

An accreditation program has long been recognized as a means of maintaining the highest standards of professionalism. Accreditation is the certification by an independent reviewing authority that an entity has met specific requirements and prescribed standards.²⁰

¹⁷ Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission (CJSTC)*, available at <https://www.fdle.state.fl.us/CJSTC/Commission/CJSTC-Home.aspx> (last visited March 18, 2021).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Florida Accreditation, *Introduction to Florida Accreditation*, available at <http://www.flaccreditation.org/> (last visited March 18, 2021).

Section 943.125, F.S., provides legislative intent that law enforcement agencies voluntarily adopt meaningful standards of operation designed to promote enhanced professionalism and to maximize the capability of law enforcement agencies to enforce the law and prevent and control criminal activity.²¹ The statute further encourages the continuation of a voluntary state accreditation program to facilitate enhanced professionalism. The accreditation program must be independent of any law enforcement agency, the Department of Corrections, the Florida Sheriff's Association, or the Florida Police Chiefs Association.²²

The law enforcement accreditation program must address, at minimum, the following aspects of law enforcement:

- Vehicle pursuits.
- Seizure and forfeiture of contraband articles.
- Recording and processing citizens' complaints.
- Use of force.
- Traffic stops.
- Handling natural and manmade disasters.
- Special operations.
- Prisoner transfer.
- Collection and preservation of evidence.
- Recruitment and selection.
- Officer training.
- Performance evaluations.
- Law enforcement disciplinary procedures and rights.
- Use of criminal investigative funds.²³

Commission for Florida Law Enforcement Accreditation, Inc.

The Commission for Florida Law Enforcement Accreditation, Inc. (CFA) was originally formed in 1993 as a response to s. 943.125, F.S.²⁴ The CFA is comprised of:

- Five police chiefs, from agencies either CFA accredited or with a signed agreement to pursue accreditation;
- Five sheriffs from agencies either CFA accredited or with a signed agreement to pursue accreditation;
- One mayor, city commissioner, city manager, or other member appointed by the Florida League of Cities;
- One county commissioner or other member appointed by the Florida Association of Counties;
- One appellate or circuit court judge appointed by the Florida Supreme Court;
- One law enforcement executive from a state law enforcement agency either CFA accredited or with a signed agreement to pursue accreditation; and

²¹ Section 943.125(1) and (2), F.S.

²² Section 943.125(3), F.S.

²³ Section 942.125(4)(a)-(n), F.S.

²⁴ Florida Department of Law Enforcement, *Florida Accreditation Office*, available at <https://www.fdle.state.fl.us/Accreditation/Accreditation> (last visited March 18, 2021).

- One representative from the Office of Inspector General either CFA accredited or with a signed agreement to pursue accreditation.²⁵

The commission meets three times a year to oversee the accreditation program and to officially accredit agencies that have passed the review process.²⁶

III. Effect of Proposed Changes:

The bill amends s. 119.0712, F.S., providing that any person who uses or releases information contained in the DAVID for a purpose not specifically authorized by law commits a noncriminal infraction, punishable by a fine not exceeding \$2,000.

This bill amends s. 943.125, F.S., providing that the law enforcement accreditation program must address access to and use of personal identification information contained in electronic databases.

The bill defines personal identification information as it is defined in s. 817.568(1)(f), F.S. Section 817.568(1)(f), F.S., defines “personal identification information,” as any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state issued or U.S. issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person’s financial resources.

This bill creates s. 943.1719, F.S., requiring the commission to provide training on the authorized access to and use of personal identification information contained in electronic databases used by a LEO in his or her official capacity. This training must be part of the curriculum required for initial certification of a LEO.

The bill creates s. 943.17191, F.S., providing that the commission must require by rule that each LEO receive, as part of the 40 hours of required instruction for continued employment or appointment as an officer, training on the authorized access to and use of personal identification information contained in electronic databases used by a LEO in his or her official capacity.

²⁵ Email from Ronald Draa, Chief of Staff, FDLE, RE: SB 890 Use of Electronic Databases (Email on file with Committee on Criminal Justice) (February 10, 2021).

²⁶ Florida Department of Law Enforcement, *Florida Accreditation Office*, available at <https://www.fdle.state.fl.us/Accreditation/Accreditation> (last visited March 18, 2021).

The training under ss. 943.1719 and 943.17191, F.S., must at a minimum include:

- The proper use and limitations on use of electronic databases in a LEO's official capacity.
- The penalties associated with the misuse of such electronic databases.

This bill is effective October 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:

None.

C. Government Sector Impact:

The FDLE has indicated the department will need \$37,663 in non-recurring funds to implement the provisions of the bill. Specifically, the FDLE estimated the cost to update the law enforcement basic recruit training program and to develop a new post-basic training course is approximately \$7,663. The FDLE also provided that the technological

costs of the bill, with approximately 3 months of IT work (analysis, design, programming, and testing), will cost the department approximately \$30,000.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.0712 and 943.125.

This bill creates the following sections of the Florida Statutes: 943.1719, and 943.17191.

IX. Additional Information:

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

CS/CS by Rules on March 18, 2021:

The committee substitute provides that any person who uses or releases information contained in the DAVID for a purpose not specifically authorized by law commits a noncriminal infraction, punishable by a fine not exceeding \$2,000.

CS by Criminal Justice on February 16, 2021:

The committee substitute adds a reference to s. 817.568(1)(f), F.S., defining personal identification information. Additionally, the amendment changes the effective date to October 1, 2021.

- B. **Amendments:**

None.

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

²⁷ Department of Law Enforcement, *2021 Legislative Bill Analysis for SB 890*, (February 10, 2021), p. 3-5 (on file with the Senate Committee on Criminal Justice).



446042

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2021	.	
	.	
	.	
	.	

The Committee on Rules (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete lines 26 - 32
and insert:

Section 1. Paragraph (e) is added to subsection (2) of
section 119.0712, Florida Statutes, is amended to read:

119.0712 Executive branch agency-specific exemptions from
inspection or copying of public records.—

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(a) For purposes of this subsection, the term “motor
vehicle record” means any record that pertains to a motor



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vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles.

(b) Personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

(c) E-mail addresses collected by the Department of Highway Safety and Motor Vehicles pursuant to s. 319.40(3), s. 320.95(2), or s. 322.08(10) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies retroactively.

(d)1. Emergency contact information contained in a motor vehicle record is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

(e) Any person who uses or releases any information contained in the Driver and Vehicle Information Database for a purpose not specifically authorized by law commits a noncriminal infraction, punishable by a fine not exceeding \$2,000.

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



446042

41 And the title is amended as follows:
42 Delete lines 3 - 5
43 and insert:
44 amending s. 119.0712; prohibiting the use or release,
45 not authorized by law, of any information contained in
46 the Driver and Vehicle Information Database; providing
47 a noncriminal infraction; amending s. 943.125, F.S.;
48 requiring

By the Committee on Criminal Justice; and Senator Hooper

591-02147-21

2021890c1

A bill to be entitled

An act relating to the use of electronic databases; amending s. 119.10, F.S.; increasing the maximum fine imposed on public officers who violate any provision of ch. 119, F.S.; amending s. 943.125, F.S.; requiring the law enforcement accreditation program to address access to and use of personal identification information contained in electronic databases; creating s. 943.1719, F.S.; requiring the Criminal Justice Standards and Training Commission to incorporate into the course curriculum required for initial certification of law enforcement officers instruction on the authorized access to and use of personal identification information contained in electronic databases; providing training requirements; creating s. 943.17191, F.S.; requiring the commission to adopt rules requiring that each law enforcement officer receive instruction on the authorized access to and use of personal identification information contained in electronic databases for continued employment or appointment as an officer; providing training requirements; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 119.10, Florida Statutes, is amended to read:

119.10 Violation of chapter; penalties.—

(1) Any public officer who:

Page 1 of 3

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

591-02147-21

2021890c1

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$2,000 ~~\$500~~.

Section 2. Paragraph (o) is added to subsection (4) of section 943.125, Florida Statutes, to read:

943.125 Accreditation of state and local law enforcement agencies, correctional facilities, public agency offices of inspectors general, and certain pretrial diversion programs; intent.—

(4) The law enforcement accreditation program must address, at a minimum, the following aspects of law enforcement:

(o) Access to and use of personal identification information, as defined in s. 817.568(1)(f), contained in electronic databases.

Section 3. Section 943.1719, Florida Statutes, is created to read:

943.1719 Basic skills training relating to the use of electronic databases.—The commission shall incorporate into the course curriculum required for initial certification of a law enforcement officer instruction on the authorized access to and use of personal identification information, as defined in s. 817.568(1)(f), contained in electronic databases used by a law enforcement officer in his or her official capacity. This training must include, but need not be limited to, the proper use, and limitations on use, of electronic databases in a law enforcement officer's official capacity and the penalties associated with the misuse of such electronic databases.

Section 4. Section 943.17191, Florida Statutes, is created to read:

Page 2 of 3

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

591-02147-21

2021890c1

59 943.17191 Continued employment training relating to the use
60 of electronic databases.-The commission shall by rule require
61 that each law enforcement officer receive, as part of the 40
62 hours of required instruction for continued employment or
63 appointment as an officer, instruction on the authorized access
64 to and use of personal identification information, as defined in
65 s. 817.568(1)(f), contained in electronic databases used by a
66 law enforcement officer in his or her official capacity. This
67 training must include, but need not be limited to, the proper
68 use, and limitations on use, of electronic databases in a law
69 enforcement officer's official capacity and the penalties
70 associated with the misuse of such electronic databases.

71 Section 5. This act shall take effect October 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 3, 2021

I respectfully request that **Senate Bill # 890**, relating to Use of Electronic Databases, be placed on the:

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

This bill impacts the Driver and Vehicle Information Database (DAVID) by increasing fines for a public officer who violates any provision of ch. 119, F.S., relating to public records, providing that the law enforcements accreditation program must address access to and use of personal identification information contained in electronic databases, and requiring training on access and use of personal identification information in electronic databases by the Criminal Justice Standards and Training Commission.

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 16



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations Subcommittee on Education
Banking and Insurance
Commerce and Tourism
Regulated Industries
Rules

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR JOE GRUTERS

23rd District

March 16, 2021

The Honorable Kathleen Passidomo, Chair
Committee on Rules
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo:

I am writing to request an excused absence from the Rules Committee meeting on 3/18/2021. I will not be in attendance due to Senate COVID-19 protocols. Sen. Albritton will be presenting Senate Bill 752, Public Defender Duties on my behalf.

Please do not hesitate to reach out to me if you have any questions.

Thank you,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

cc: John Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

- ☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- ☐ 316 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412
Caption: Senate Rules Committee

Case No.: -
Judge:

Type:

Started: 3/18/2021 9:05:20 AM
Ends: 3/18/2021 11:00:33 AM
Length: 01:55:14

9:05:19 AM Meeting called to order
9:05:25 AM Roll call by Cyndi
9:05:44 AM Quorum is present
9:05:54 AM Senator Gruters is excused from this meeting
9:05:58 AM Chair Passidomo gives COVID instruction to the public for appearances at the civic center
9:06:42 AM Tab 14 CS/SB 890 Uses of Electric Databases by Senator Hooper
9:07:11 AM Senator Hooper explains the bill
9:07:43 AM Amendment: barcode 446042 by Senator Hooper
9:07:51 AM Amendment is explained
9:08:05 AM No questions
9:08:13 AM No public appearance
9:08:19 AM No debate
9:08:22 AM Senator Hooper waives close.
9:08:32 AM Amendment barcode 446042 is adopted
9:08:34 AM Back on bill as amended
9:08:37 AM No questions
9:08:42 AM No public appearance
9:08:45 AM No debate
9:08:49 AM Senator Hooper waives close
9:08:52 AM Roll call
9:08:54 AM CS/CS SB 890 is reported favorably
9:09:34 AM CS SB 776 Racketeering by Senator Gainer
9:09:48 AM Senator Gainer explains the bill
9:10:00 AM No questions
9:10:38 AM Public appearance:
9:10:39 AM Kate MacFall, Humane Society of the United States, waives in support
9:10:45 AM Jessica Crawford, Florida Fish & Wildlife Conservation Commission, waives in support
9:10:56 AM Daniel Olsen, Office of the Attorney General, waives in support
9:11:09 AM No debate
9:11:13 AM Senator Gainer waives close
9:11:16 AM Roll call
9:11:21 AM CS SB 776 is reported favorably
9:11:55 AM CS CS SB 76 Property Insurance by Senator Boyd
9:12:15 AM Amendment barcode 670126 strike all by Senator Boyd
9:12:20 AM Senator Boyd explains the amendment
9:18:40 AM Chair comments regarding going through the amendments to the strike all
9:19:04 AM AA barcode 727572 by Senator Farmer
9:19:18 AM Senator Farmer asks question regarding when questions would be taken up on the strike all amendment
9:19:26 AM Chair Passidomo explains the presentation order to follow in this meeting
9:19:45 AM Senator Farmer explains amendment 727572
9:20:11 AM No questions
9:21:14 AM Amy Boggs, Attorney, FL Justice Association Property Insurance Section, speaks in support of the amendment
9:23:56 AM Other speakers from the civic center
9:24:04 AM Joe Busby, policy holder, representing himself speaking in support of the amendment
9:26:41 AM Reggie Garcia, Florida Justice Association, speaks in support of the amendment
9:28:35 AM Debate
9:28:50 AM Senator Brandes speaks in opposition to the amendment
9:30:44 AM Senator Thurston in debate on the amendment to the amendment
9:34:15 AM Senator Boyd comments on the amendment
9:35:00 AM Senator Farmer closes on the amendment
9:41:20 AM Amendment barcode 727572 is not adopted

9:41:26 AM AA barcode 547800 by Senator Farmer
9:41:37 AM Senator Farmer explains the amendment to the amendment
9:41:52 AM No questions
9:43:21 AM Amy Boggs, Attorney, Florida Justice Association Property Insurance Section, speaks in support of the amendment
9:44:25 AM Debate
9:44:29 AM Senator Brandes speaks in opposition to amendment
9:46:38 AM Senator Thurston speaks in support of the amendment
9:48:59 AM Senator Boyd comments on amendment
9:49:44 AM Senator Farmer closes on the amendment
9:51:44 AM Amendment barcode 547800 is not adopted
9:52:07 AM AA barcode 546412 by Senator Farmer
9:52:11 AM Senator Farmer explains the amendment to the amendment
9:53:06 AM No questions
9:53:12 AM No public appearance
9:53:16 AM No debate
9:53:24 AM Senator Boyd comments on the amendment
9:53:54 AM Senator Farmer closes on amendment
9:54:18 AM Amendment barcode 546412 is not adopted
9:54:33 AM AA barcode 861760 by Senator Thurston
9:54:54 AM Senator Thurston explains the amendment to the amendment
9:55:55 AM No questions
9:55:59 AM Amy Boggs, Attorney, Florida Justice Association Property Insurance Section, speaks in support of the amendment
9:57:59 AM Steven Richardson, Florida Justice Reform Institute, speaks in opposition to the amendment
10:00:51 AM Debate
10:01:01 AM Senator Brandes in opposition to the amendment
10:01:27 AM Senator Farmer debates on surplus lines
10:04:38 AM Senator Boyd comments on the amendment regarding surplus lines
10:05:31 AM Senator Thurston closes on the amendment
10:06:15 AM Amendment barcode 861760 is not adopted
10:07:14 AM Late filed AA barcode 706816 by Senator Thurston
10:07:46 AM Senator Thurston explains the amendment to the amendment
10:08:45 AM No questions
10:09:05 AM Public appearance:
10:09:07 AM Steven Richardson, Florida Justice Reform Institute, speaks in opposition to the amendment
10:10:41 AM Amy Boggs, Attorney, Florida Justice Association Property Insurance Section, speaks in support of the amendment
10:13:29 AM Joe Busby, homeowner and policy holder, speaks in support of the amendment
10:14:23 AM Reggie Garcia, Florida Justice Association, speaks in support of the amendment
10:17:12 AM Senator Farmer in debate
10:18:12 AM Senator Boyd comments on the amendment
10:18:18 AM Senator Thurston closes on amendment
10:18:57 AM Amendment barcode 706816 is not adopted
10:19:05 AM Late filed AA barcode 518486 by Senator Brandes
10:19:33 AM Senator Brandes explains amendment to amendment and then withdraws it
10:19:36 AM Chair states show the amendment to the amendment withdrawn
10:19:37 AM Late filed AA barcode 798322 by Senator Gibson
10:19:40 AM Senator Gibson explains the amendment to the amendment
10:21:17 AM No questions
10:22:16 AM Amy Boggs, Attorney, Florida Justice Association Property Insurance Section, speaks in support of the amendment
10:25:23 AM Senator Farmer in debate
10:26:22 AM Senator Boyd comments on amendment
10:27:09 AM Senator Gibson closes on the amendment
10:27:30 AM Amendment Barcode 798322 is not adopted
10:28:08 AM Roll call requested by show of hands - Roll call on amendment 798322
10:28:19 AM Roll call: Amendment 798322 is reported not adopted
10:29:25 AM Late filed AA barcode 651414 by Senator Gibson
10:29:27 AM Senator Gibson explains the amendment to the amendment
10:30:52 AM Questions: none
10:31:01 AM Amy Boggs, Attorney, Florida Justice Association Property Insurance Section, speaks in support of the

amendment

10:33:24 AM Richie Kidwell, President - Restoration Association of Florida, speaks in support of the amendment
10:34:19 AM Reggie Garcia, Florida Justice Association, speaks in support of the amendment
10:35:39 AM Senator Powell debates in support of the amendment
10:37:15 AM Senator Farmer in support of amendment
10:37:59 AM Senator Boyd comments on the amendment
10:39:06 AM Senator Gibson closes on the amendment
10:39:20 AM Amendment barcode 651414 is not adopted
10:40:10 AM Roll call requested by show of hands - Roll call on amendment 651414
10:40:31 AM Roll call: Amendment 651414 is reported not adopted
10:41:17 AM AA barcode 128746 by Senator Farmer
10:41:49 AM Senator Farmer explains the amendment to the amendment and then withdraws it
10:41:59 AM Chair states to show the amendment withdrawn
10:42:37 AM Back on the Amendment 670126 by Senator Boyd
10:42:44 AM No public appearance
10:42:50 AM No debate
10:42:59 AM Senator Boyd closes on the amendment - the amendment barcode 670126 is adopted
10:43:18 AM Chair states that as a result of 670126 having been adopted, the following amendments to the bill are now out of order: 963428, 650462, 393102, 971154, 397328, 503350, and 934564
10:43:44 AM Back on the bill as amended
10:43:55 AM Senator Farmer comments and makes request that if bill is passed, it be re-referred back to Banking and Insurance. Chair states that would go to Rules Chair during the CS review process
10:45:01 AM In questions: Senator Powell asks a question relating to roof costs
10:45:38 AM Senator Boyd responds
10:47:05 AM Chair states that with limited time left for the meeting, she wants to hear from members of the public wishing to speak so they don't have to return for the next meeting
10:47:35 AM Public Appearance
10:47:42 AM Amy Boggs Attorney, of St. Petersburg FL, Justice Association Property Insurance Section speaks against the bill
10:50:32 AM Steven Richardson, Florida Justice Reform Institute, waives in support
10:50:52 AM Richie Kidwell, Restoration Association of FL, speaks against the bill
10:52:37 AM Patrick R. Carr Partner, My Claims Care LLC. Oviedo FL representing Homeowners, Roof Contractors, My Claims Care speaks against
10:54:38 AM Winston Taitt, Attorney, representing Homeowners, from Orlando speaks against the bill
10:56:19 AM Agatha Hall, Business Development Manager for Hippo Roofing from Melbourne, FL, representing Licensed Florida Roofing Contractors, speaks against the bill
10:58:17 AM Moving to Debate: Senator Brandes begins debate to be continued at next meeting. He discusses probabilities of rising rates for Floridians
10:59:30 AM Chair Passidomo interjects: Meeting will be adjourned by operation of the clock. Bills not reached on today's agenda may be placed on a future agenda. CS/CS/SB 76 will be first on our next meeting on March 25th when debate will resume. Senators Stargel, Bean, Diaz and Garcia move to be shown voting in the affirmative on Tabs 13 and 14. By operation of the rules we are adjourned.