Tab 1	**CS/CS/SB 76** by **JU, BI, Boyd (CO-INTRODUCERS) Brandes**; (Compare to CS/H 00305) Property Insurance					
670126	D	S	RCS	RC, Boyd	Delete everything after	03/25 04:37 PM
~~518486~~	AA	S	WD	RC, Brandes	btw L.4 - 5:	03/25 04:37 PM
861760	AA	S	UNFAV	RC, Thurston	Delete L.5 - 43.	03/25 04:37 PM
727572	AA	S	UNFAV	RC, Farmer	Delete L.44 - 49.	03/25 04:37 PM
798322	AA	S	UNFAV	RC, Gibson	Delete L.50 - 103.	03/25 04:37 PM
651414	AA	S	UNFAV	RC, Gibson	Delete L.73 - 88:	03/25 04:37 PM
547800	AA	S	UNFAV	RC, Farmer	Delete L.104 - 123.	03/25 04:37 PM
706816	AA	S	UNFAV	RC, Thurston	Delete L.150 - 325.	03/25 04:37 PM
~~128746~~	AA	S	WD	RC, Farmer	Delete L.483:	03/25 04:37 PM
546412	AA	S	UNFAV	RC, Farmer	Delete L.486:	03/25 04:37 PM
963428	A	S	OO	RC, Thurston	Delete L.153 - 189.	03/25 04:37 PM
934564	A	S	OO	RC, Gibson	Delete L.199 - 252.	03/25 04:37 PM
503350	A	S	OO	RC, Gibson	Delete L.222 - 237:	03/25 04:37 PM
650462	A	S	OO	RC, Farmer	Delete L.253 - 272.	03/25 04:37 PM
393102	A	S	OO	RC, Thurston	Delete L.299 - 463.	03/25 04:37 PM
971154	A	S	OO	RC, Thurston	Delete L.621 - 623:	03/25 04:37 PM
397328	A	S	OO	RC, Farmer	Delete L.624:	03/25 04:37 PM

Tab 2	**SB 82** by **Baxley (CO-INTRODUCERS) Hutson**; (Identical to H 00659) Sponsorship Identification Disclaimers

Tab 3	**CS/SB 96** by **CF, Book (CO-INTRODUCERS) Brodeur**; (Compare to H 07039) Child Welfare					
335142	A	S	RS	RC, Book	Delete L.526 - 528:	03/25 04:47 PM
526162	SA	S	RCS	RC, Book	Delete L.508 - 547:	03/25 04:47 PM

Tab 4	**CS/SB 148** by **RI, Bradley**; (Compare to CS/H 00329) Beverage Law					
~~719554~~	A	S	WD	RC, Brandes	btw L.277 - 278:	03/25 02:19 PM

Tab 5	**CS/SB 170** by **HP, Hooper (CO-INTRODUCERS) Gruters**; (Identical to 1ST ENG/H 00017) Podiatric Medicine

Tab 6	**CS/CS/SB 228** by **JU, CM, Bradley (CO-INTRODUCERS) Burgess**; (Similar to CS/H 00121) Notaries Public					
175934	A	S	RCS	RC, Bradley	Delete L.366 - 383:	03/25 04:52 PM

Tab 7	**CS/SB 286** by **RI, Perry**; (Identical to CS/H 00137) Fire Sprinklers

Tab 8	**CS/SB 354** by **JU, Harrell**; (Identical to CS/H 00495) Restitution					
682316	A	S	RCS	RC, Harrell	Delete L.30 - 55:	03/25 04:55 PM

Tab 9	**CS/SB 378** by **GO, Bradley**; (Similar to CS/H 00585) Payment for Construction Services

Tab 10	**CS/CS/SB 496** by **JU, CA, Perry**; (Similar to CS/CS/CS/H 00059) Growth Management					
878280	A	S	RCS	RC, Diaz	btw L.102 - 103:	03/25 04:57 PM

Tab 11	**CS/SB 602** by **CM, Burgess**; (Identical to CS/H 00339) Business Organizations

Tab 12	**CS/SB 622** by **JU, Perry**; (Similar to CS/CS/H 00473) Liens and Bonds

Tab 13	**CS/CS/SB 626** by **CJ, CF, Bracy (CO-INTRODUCERS) Torres, Book**; (Identical to CS/H 00303) Juvenile Justice

Tab 14	**CS/SB 702** by **JU, Thurston**; (Identical to H 00253) Individual Retirement Accounts

Tab 15	**SB 728** by **Broxson**; (Identical to H 00733) Credit for Reinsurance

Tab 16	**SB 738** by **Baxley**; (Identical to H 00353) Bicycle Operation Regulations

336198	A	S	RCS	RC, Brandes	btw L.16 - 17:	03/25 05:05 PM

Tab 17	**SB 752** by **Gruters**; (Identical to H 00067) Public Defender Duties

Tab 18	**CS/SB 920** by **EN, Bradley**; (Identical to H 00287) Liability of Persons Providing Areas for Public Outdoor Recreational Purposes

887138	A	S	RS	RC, Bradley	Delete L.12 - 49:	03/25 05:07 PM
755520	SA	S	RCS	RC, Bradley	Delete L.12 - 16:	03/25 05:07 PM

Tab 19	**SB 922** by **Burgess**; (Similar to H 00541) Veterans' Preference in Employment

Tab 20	**SB 952** by **Burgess**; (Similar to H 00169) Water Management Districts

Tab 21	**CS/CS/SB 1040** by **AP, GO, Brodeur**; (Similar to CS/CS/CS/H 00515) Duties of the Attorney General

Tab 22	**CS/SB 1046** by **CM, Bean (CO-INTRODUCERS) Baxley, Bradley**; (Compare to CS/CS/H 00755) Arrest Booking Photographs

Tab 23	**CS/SB 1088** by **CJ, Rodrigues**; (Identical to H 00661) Modification or Continuation of Terms of Probation

Tab 24	**CS/SB 1378** by **JU, Bradley**; (Similar to H 01523) Corporate Espionage

Tab 25	**CS/HB 9** by **JDC, Zika (CO-INTRODUCERS) Bell, Bush, Casello, Fabricio, Giallombardo, Grieco, Hunschofsky, Maggard, McClain, Sirois, Smith, D., Snyder, Tant, Trabulsy, Woodson**; (Identical to CS/S 01608) Protecting Consumers Against Pandemic-related Fraud

Tab 26	**SB 7000** by **HP**; (Identical to H 07001) OGSR/Nurse Licensure Compact

Tab 27	**SB 7012** by **CJ**; (Identical to H 07009) OGSR/Criminal History Information of Juveniles

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Thursday, March 25, 2021
TIME: 9:00 a.m.—12:00 noon
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		
	Resume debate		
1	**CS/CS/SB 76** Judiciary / Banking and Insurance / Boyd (Compare CS/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 Temporarily Postponed RC 03/25/2021 Fav/CS	Fav/CS Yeas 12 Nays 5
2	**SB 82** Baxley (Identical H 659)	Sponsorship Identification Disclaimers; Modifying provisions governing general independent expenditure disclaimers to conform to changes made by the act; removing an exemption for text messages from certain requirements governing political advertisement disclaimers to conform to changes made by the act; establishing sponsorship identification disclaimer requirements for certain text messages; modifying existing requirements governing telephone call disclaimers; requiring specified persons and organizations sending certain paid text messages to have and maintain a registered agent for specified purposes, etc. EE 02/16/2021 Favorable JU 03/02/2021 Favorable RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**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 RC 03/25/2021 Fav/CS	Fav/CS Yeas 16 Nays 0
4	**CS/SB 148** Regulated Industries / Bradley (Compare CS/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 RC 03/25/2021 Favorable	Favorable Yeas 15 Nays 2
5	**CS/SB 170** Health Policy / Hooper (Similar H 17)	Podiatric Medicine; Authorizing the Board of Podiatric Medicine to require a specified number of continuing education hours related to the safe and effective prescribing of controlled substances; providing for governance of podiatric physicians who are supervising medical assistants, etc. HP 01/27/2021 Fav/CS ED 03/02/2021 Favorable AP 03/18/2021 Favorable RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**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 RC 03/25/2021 Fav/CS	Fav/CS Yeas 17 Nays 0
7	**CS/SB 286** Regulated Industries / Perry (Identical CS/H 137, Compare CS/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 RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
8	**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 RC 03/25/2021 Fav/CS	Fav/CS Yeas 15 Nays 2
9	**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 RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/CS/SB 496** Judiciary / Community Affairs / Perry (Similar CS/CS/CS/H 59)	Growth Management; Specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; requiring local governments to include a property rights element in their comprehensive plans; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances, etc. CA 03/03/2021 Fav/CS JU 03/15/2021 Fav/CS RC 03/25/2021 Fav/CS	Fav/CS Yeas 17 Nays 0
11	**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 RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
12	**CS/SB 622** Judiciary / Perry (Identical CS/H 473)	Liens and Bonds; Requiring that a copy of a notice of nonpayment be served on the surety; prohibiting a person from requiring a claimant to furnish a certain waiver in exchange for or to induce certain payments; authorizing a lienor to record one claim of lien for multiple direct contracts; revising information to be included in a notice of commencement; requiring service of documents relating to construction bonds to be made in a specified manner, etc. JU 02/15/2021 Fav/CS GO 03/17/2021 Favorable RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
13	**CS/CS/SB 626** Criminal Justice / Children, Families, and Elder Affairs / Bracy (Identical CS/H 303, Compare H 1451, S 1452)	Juvenile Justice; Creating the "Kaia Rolle Act"; prohibiting a child younger than a certain age from being taken into custody, arrested, charged, or adjudicated delinquent for a delinquent act or violation of law; providing an exception, etc. CF 02/16/2021 Temporarily Postponed CF 03/02/2021 Fav/CS CJ 03/16/2021 Fav/CS RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**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 RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
15	**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 RC 03/25/2021 Favorable	Favorable Yeas 16 Nays 1
16	**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 RC 03/25/2021 Fav/CS	Fav/CS Yeas 17 Nays 0
17	**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 RC 03/25/2021 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**CS/SB 920** Environment and Natural Resources / Bradley (Identical H 287)	Liability of Persons Providing Areas for Public Outdoor Recreational Purposes; Expanding the applicability of the limitation of liability for persons who provide areas to the public for outdoor recreational purposes without charge, etc. EN 02/15/2021 Fav/CS JU 03/02/2021 Favorable RC 03/25/2021 Fav/CS	Fav/CS Yeas 17 Nays 0
19	**SB 922** Burgess (Similar H 541)	Veterans' Preference in Employment; Authorizing the state and its political subdivisions to waive certain postsecondary educational requirements for employment for servicemembers and veterans who meet specified criteria; revising the list of positions that are exempt from veterans' preference requirements; requiring, rather than authorizing, each political subdivision to develop and implement a veterans' recruitment plan for specified purposes; modifying point preferences given to veterans and their family members when a numerically based selection process is used for hiring, etc. MS 03/09/2021 Favorable RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
20	**SB 952** Burgess (Similar H 169)	Water Management Districts; Authorizing water management districts to purchase commodities and contractual services from the contracts of other specified entities under certain circumstances, etc. EN 02/15/2021 Favorable GO 03/03/2021 Favorable RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
21	**CS/CS/SB 1040** Appropriations / Governmental Oversight and Accountability / Brodeur (Similar CS/CS/CS/H 515)	Duties of the Attorney General; Relieving the Department of Legal Affairs from certain duties associated with specified neighborhood improvement districts; repealing a provision relating to the Safe Neighborhoods Program; repealing a provision relating to the duties of the Department of Legal Affairs; authorizing certain declarations during a state of emergency to be extended by executive order, etc. GO 03/10/2021 Fav/CS AP 03/18/2021 Fav/CS RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/SB 1046** Commerce and Tourism / Bean (Identical CS/H 755)	Arrest Booking Photographs; Expanding the applicability of provisions relating to the dissemination of arrest booking photographs to include a person or an entity whose primary business model is the publication or dissemination of such photographs for a commercial purpose or pecuniary gain, etc. CJ 03/02/2021 Favorable CM 03/15/2021 Fav/CS RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
23	**CS/SB 1088** Criminal Justice / Rodrigues (Identical H 661, Compare H 799)	Modification or Continuation of Terms of Probation; Revising the circumstances under which a court must modify or continue a term of probation, etc. CJ 03/09/2021 Fav/CS RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
24	**CS/SB 1378** Judiciary / Bradley (Similar H 1523)	Corporate Espionage; Citing this act as the "Combating Corporate Espionage in Florida Act"; prohibiting theft of a trade secret; prohibiting trafficking in trade secrets; providing criminal penalties; reclassifying the criminal penalty and increasing the offense severity ranking for an offense committed with specified intent, etc. CJ 03/09/2021 Favorable JU 03/15/2021 Fav/CS RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
25	**CS/HB 9** Judiciary Committee / Zika (Identical CS/S 1608)	Protecting Consumers Against Pandemic-related Fraud; Defines "personal protective equipment"; prohibits dissemination of false or misleading information relating to personal protective equipment with specified intent; prohibits dissemination of false or misleading vaccine information with specified intent; authorizes state attorney or statewide prosecutor to prosecute violation; authorizes AG to seek civil remedies. RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0
26	**SB 7000** Health Policy (Identical H 7001)	OGSR/Nurse Licensure Compact; Amending a provision which provides an exemption from public record requirements for certain personal identifying information of nurses in the Nurse Licensure Compact and from public record and meeting requirements for certain meetings or portions of meetings and certain records held by the Interstate Commission of Nurse Licensure Compact Administrators; removing the scheduled repeal of the exemptions, etc. GO 03/17/2021 Favorable RC 03/25/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	**SB 7012** Criminal Justice (Identical H 7009)	OGSR/Criminal History Information of Juveniles; Amending provisions abrogating the scheduled repeals of public records exemptions relating to criminal history information of juveniles, etc. GO 03/17/2021 Favorable RC 03/25/2021 Favorable	Favorable Yeas 17 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/CS/SB 76
INTRODUCER:	Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senators Boyd and Brandes
SUBJECT:	Property Insurance
DATE:	March 29, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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.

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 covering reimbursement schedule without also having to offer a policy that provides replacement cost adjustment for such a roof. The roof covering reimbursement schedule must provide for repair, replacement, and installation based on the annual age of the roof and the roof covering type. The insurer may also offer homeowner's insurance policies that limit coverage for a roof to a stated value sublimit. However, in the event

of a total loss to the primary structure, neither a roof covering reimbursement schedule nor a stated value sublimit of roof coverage will apply, and 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.

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.

Finally, the bill requests that the Florida Supreme Court adopt a rule that requires plaintiff and defense attorneys to submit itemized closing statements in cases where a recovery is made in residential property litigation.

The bill takes effect July 1, 2021.

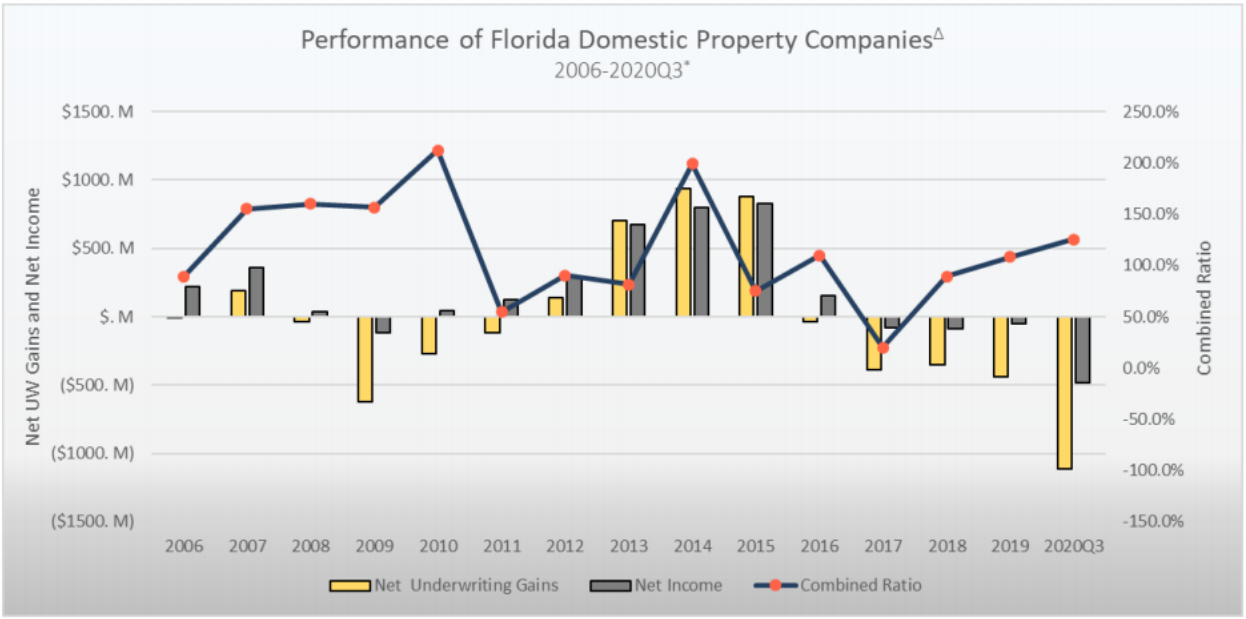
II. Present Situation:

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 ratios[1] 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]



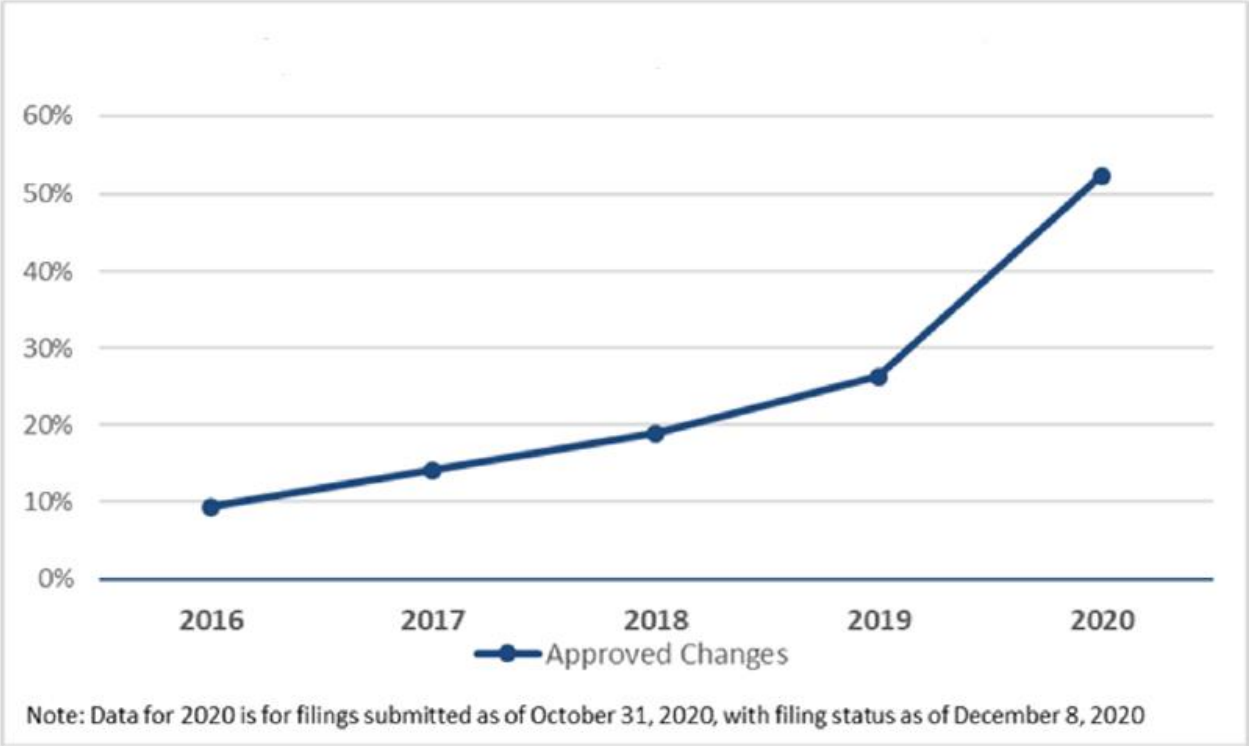
△ The domestic companies do not include Citizens Property Insurance Corporation. The data is from financial statements submitted to the National Association of Insurance Commissioners.

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.

[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).

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



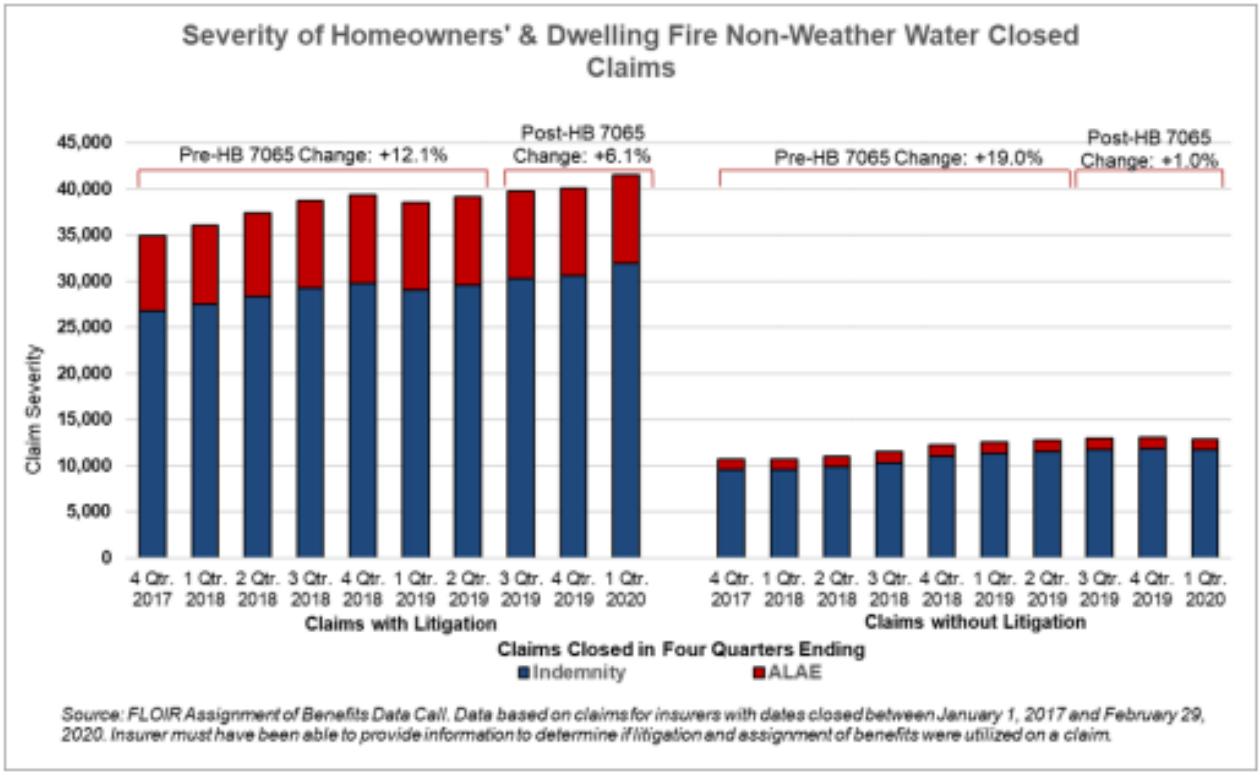
In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic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

[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).
[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).

Figure 3. Severity of Claims with Litigation versus Claims without Litigation.[8]



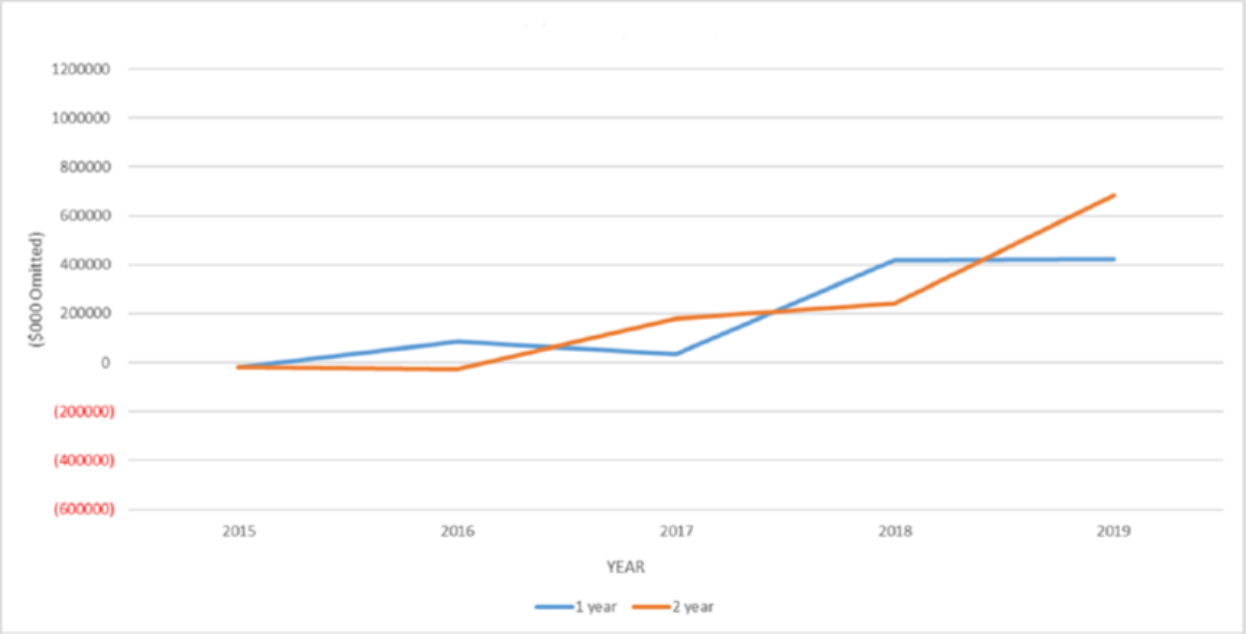
According to OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.[9] Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or at the 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.

[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).
[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).

Florida Domestic Property Insurance Market Adverse Loss Reserve Development[11]		
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 Market[12]



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

[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) 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).

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%
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 Florida[15]		
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

[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).
[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*.

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.

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]

[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).

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]

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]

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[22] *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207, 1215 (Fla. 2016) (Noting that "it is 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").

[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).

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.
- 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

[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)).
[28] *Id.*
[29] *Joyce*, 228 So. 3d at 1125.

> 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 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]

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

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.

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

[37] Section 627.7152(10)(a), F.S.
[38] *Id*.
[39] Section 57.105(1) and (2), F.S.

> 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]

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.

[40] Section 768.79(2), F.S.
[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).

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 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.

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

Roof Surface Payment Schedule[48]								
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.								
	Roof Surface Material Type							
Age of Roof in Years	**Class 3 or 4 Impact Resistant, Synthetic, Plastic, or Architectural Composition Shingles**	**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**
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

[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).

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 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]

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[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.
[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.

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:

- 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 claims[61], 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

[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).
[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.

- 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 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

[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.
[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).

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]

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[73] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,[74] which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.[75] Rather, surplus lines insurers are "unauthorized" insurers,[76] but may transact surplus lines insurance if they are made "eligible" by the OIR. Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.[77]

Under s. 626.9373, F.S., a court may award reasonable attorney fees against a surplus lines insurer in a claims arising under an insurance policy.[78]

Florida Rules of Civil Procedure

The Florida Supreme Court is vested with the exclusive power of adopting rules for the practice and procedure in state courts,[79] including the Florida Rules of Civil Procedure governing all civil actions and special statutory proceeding in circuit and county courts.[80] Notwithstanding the separation of judicial and legislative branches,[81] such rules may only be repealed by a general law enacted by a two-thirds vote of each chamber of the Legislature.[82]

[72] *Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).
[73] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.
[74] Section 624.01, F.S., provides that the Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[75] Section 624.09(1), F.S.
[76] Section 624.09(2), F.S.
[77] Section 626.913(4), F.S.
[78] Section 626.9373, F.S.
[79] Fla. Const. art. V, s. 2(a) (2020).
[80] Fla. R. Civ. P. 1.010.
[81] Fla. Const. art. 2, s. 3 (2020).
[82] *See* note 79.

III. Effect of Proposed Changes:

Attorney Fees (Sections 1 and 2)

Surplus Lines

Section 1 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; however, the full amount of attorney fees may be awarded to the insurer if the claimant is an assignee.

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

Other Property Insurance Policies

Section 2 amends s. 627.428., F.S., to specify that the statute does not apply to judgments against residential or commercial property insurers. The change clarifies that s. 627.70152, F.S., created by Section 6 of the bill, will govern attorney fee awards in commercial and residential property litigation.

Roof Surface Reimbursement Schedules (Section 3)

Section 3 amends s. 627.7011, F.S., to provide for the use of a roof covering reimbursement schedule to limit coverage in a personal lines residential property insurance policy. The roof covering 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 covering

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 covering reimbursement schedules must allow for actuarially sound rate standards[83] under Florida's Rating Law,[84] 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.

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 covering 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.[85]

Currently, insurers may offer homeowner's insurance policies with roof covering 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 offering a roof covering reimbursement schedule may also offer 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

[83] *See* ch. 627.062, F.S.
[84] *See* ch. 627 pt. I, F.S.
[85] *See* s. 627.702, F.S.

replacement cost coverage or a roof reimbursement schedule. In the event of a total loss to the primary structure caused by a covered peril, the stated value of coverage may not be applied.

Notice of Property Insurance Claim (Section 4)

Section 4 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 5)

Section 5 amends s. 627.7015(9), F.S., to authorize 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 6)

Section 6 creates s. 627.70152, F.S., creating several provisions governing lawsuits arising under a property insurance policy.

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.[86] 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.

The notice of intent to initiate litigation 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.[87]

An assignee bringing a third-party claim must also comply with s. 627.7152, F.S., pertaining to assignment agreements.

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

[86] 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.
[87] This is a current precondition to an assignee filing suit under s. 627.7152(9), F.S.

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; however, the full amount of attorney fees may be awarded to the insurer if the claimant is an assignee

Attorney fees may also be awarded under s. 57.105, F.S., pertaining to unsupported claims, defenses, or delays. An award for attorney fees and cost may only include such fees and costs that are incurred after a suit is filed and may not include such fees and costs incurred while the suit is in abatement.

In an award of attorney fees under a property insurance policy, there is a strong presumption that the lodestar fee is a sufficient and reasonable. 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.

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 7)

Section 7 creates s. 627.70153, F.S., related to consolidation of residential property insurance actions, to require 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 must 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 8)

Section 8 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.

Lawyer Closing Statements for Property Claims (Section 9)

Section 9 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 plaintiff and defense 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 10)

Section 10 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: 626.9373, 627.428, 627.7011, 627.70132, 627.7015, and 627.7152.

This bill creates section 627.70152 and 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/CS by Rules on March 25, 2021:
The committee substitute:

- Requires that all claimants, not just assignee claimants, must provide with the written notice of intent to initiate litigation a detailed, itemized written invoice or estimate of services and, if work has been completed, proof the work was performed in accordance with accepted industry standards;
- Provides that if the claimant is an assignee and recovers less than 20 percent of the claimant's demand, the claimant must pay the full amount of the authorized or surplus lines insurer's attorney fees;
- Prohibits an award of attorney fees for such fees and costs incurred before the lawsuit was filed and provides the attorney fee award may not include such fees and costs incurred while the lawsuit is in abatement;
- Specifies that assignment agreements do not restrict the ability of an insurer to communicate with its insured; and
- Makes additional technical and clarifying changes to the underlying 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.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2021	.	
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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.



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

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

5. "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.

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

(b) 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. 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 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.

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


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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.

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

627.428 Attorney fees.—

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

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

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

(5) This section does not:

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

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

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

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

a. Seventy percent for a metal roof type.

b. Forty percent for a concrete tile and clay tile roof 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



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



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



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 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.

(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


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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



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~~


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~~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



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



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	.	
03/25/2021	.	
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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


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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
	.	
	.	
	.	

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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
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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	.	
03/25/2021	.	
	.	
	.	
	.	

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	.	
03/25/2021	.	
	.	
	.	
	.	

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

Delete line 100

and insert:

require defense and plaintiff lawyers or law firms to provide

397328

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/25/2021	.	
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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 ==========



And the title is amended as follows:

Delete line 102

and insert:

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

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

590-02598-21 202176c2

A bill to be entitled

An act relating to property insurance; amending s. 626.112, F.S.; providing a criminal penalty for aiding or abetting unlicensed activity; 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; amending s. 626.9373, F.S.; 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; defining terms; providing for an award of attorney fees for certain claims under specified circumstances; amending s. 627.428, F.S.; 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; amending s. 627.7011, F.S.; 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

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

590-02598-21 202176c2

policies by including roof surface reimbursement schedules; providing requirements for roof surface reimbursement schedules; prohibiting application of a roof surface 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 act; authorizing property insurance policies to require policyholders and assignees to participate in mediation; creating s. 627.70152, F.S.; providing

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

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 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 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 unrepresented 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 participating lawyers or firms to provide closing statements to the department under certain circumstances; providing an effective date.

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

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

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

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

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

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

interest.

(b) 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 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.

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

627.428 Attorney fees.—

(4) 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.

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

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

(5) This section does not:

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

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

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

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

a. Seventy percent for a metal roof type.

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

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 SURFACE 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 surface 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 surface 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 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 6. 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 7. 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 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 8. 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:

(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. 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 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.

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

1. Comply with s. 627.7152; and

2. Concurrent with the notice, provide the named insured, the 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.

(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

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

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.

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

(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

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

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.~~

~~(c) "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 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:

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 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~~

~~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~~

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

~~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.

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

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,

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

SB 76
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Property Insurance

Name Timothy J. Meenan

Job Title Lobbyist

Address PO Box 11247
Street

Phone 8504254000

Tallahassee FL 32302
City *State* *Zip*

Email tim@meenanlawfirm.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Tower Hill Insurance Group

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.

This information was not read into the record by the Chair

S-001 (10/14/14)

Please let me speak. I drove 6 hours to tell you my story

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25-21
Meeting Date

SB 76
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 76 Property Insurance Reform

Name Mandy Wells

Job Title Lee County Realtor - 4 years & a teacher before that

Address 1 MVP Realty
Street

Phone 239 316 2205

Naples FL
City *State* *Zip*

Email —

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself & all the victims of contractor insurance fraud

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 thi

This information was not read into the record by the Chair

insurance rate hikes

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/21
Meeting Date

SB 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
Street

Phone 850-521-1200

Tallahassee FL 32301
City *State* *Zip*

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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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)

3/25/21
Meeting Date

76
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Property Insurance

Name BG Murphy

Job Title Legislative Affairs Director

Address 3159 Shamrock St. S.
Street

Tallahassee FL 32309
City *State* *Zip*

Phone bmurphy@faia.com

Email 863-698-8820

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Insurance Agents

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.

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

3/25/2021
Meeting Date

76
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Property Insurance

Name B.D. Jogerst

Job Title

Address 516 N Adams St
Street

Phone 850-224-7173

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

Email bjogerst@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

This information was not read into the record by the Chair

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:	SB 82
INTRODUCER:	Senators Baxley and Huston
SUBJECT:	Sponsorship Identification Disclaimers
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rey	Roberts	EE	**Favorable**
2.	Ravelo	Cibula	JU	**Favorable**
3.	Rey	Phelps	RC	**Favorable**

I. Summary:

SB 82 creates a comprehensive sponsorship disclaimer policy for most text message political advertisements, independent expenditures, and electioneering communications. Text messages must carry a sponsorship disclaimer, or a URL address or hyperlink to a website containing the disclaimer. The bill specifically exempts:

- Text messages sent by individuals not being paid and without the assistance of mass distribution technology; and
- Text messages that require the recipient to sign-up or opt-in to receive them.

The new texting provisions incorporate some existing telephone-bank solicitation protections, including a requirement that a person or organization that sends text messages have a registered agent in this state for service of process.

The bill takes effect October 1, 2021.

II. Present Situation:

Florida law has a disjointed approach to sponsorship disclaimer requirements for political text messaging, depending on whether the text message meets the definition of a political advertisement (disclaimer required, with exemptions), an independent expenditure (disclaimer required; no applicable exemptions), or an electioneering communication (probably no disclaimer required).

Political Advertisements

A "political advertisement" is a paid expression in "communications media," such as the *Internet* or a *telephone company*, which "*expressly advocates* the election or defeat of a candidate or the

approval or rejection of an issue."[1] Courts have consistently interpreted "express advocacy" to require the use of so-called "magic words," such as "vote for," "vote against," "support," or "oppose."[2]

Candidates and others who send a *political advertisement* by text must include a sponsorship identification disclaimer, unless the text or message is sent by short message service (SMS) and:

- Is less than 200 characters in length; or
- Requires the recipient to sign-up or opt-in to receive it.[3]

Independent Expenditures

An "independent expenditure" (IE) is a specific *type* or *subset* of political advertisement, one where the expenditure is "not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee."[4] The independent expenditure must still *expressly advocate* as indicated above.

Section 106.071, F.S., appears to require individuals and groups to include a sponsorship identification disclaimer on ALL text messages, without exemption.[5] Subsection (2) of that section provides as follows:

> (2) Any *political advertisement* paid for by an independent expenditure shall prominently state "Paid political advertisement paid for by (Name and address of person paying for advertisement) independently of any (candidate or committee)." (emphasis added)

[1] Section 106.011(4) and (15), F.S.
[2] "Speech containing the "magic words" is "unambiguously campaign related," *Buckley v. Valeo*, 96 S.Ct. 612, 81 (1976), while speech without these words is not," *McConnell v. Federal Election Com'n*, 540 U.S. 93, 281 (2003).
[3] Section 106.143(1) and (10)(f), F.S.
[4] Section 106.011(12)(a), F.S.
[5] Section 106.071(2) and (3), F.S. Subsection (3) exempts "novelty items" valued at $10 or less that support, but do not oppose, a candidate or issue; it is difficult to see how such an exemption could apply to a text message.

An argument can be made that the exemptions that apply to general political advertisements discussed in the previous section should also apply (i.e., less than 200 characters in length or recipient opted-in), because IEs are a subset of political advertisements. But this argument seems likely to fail, as it would contravene a well-established principal of statutory construction: the *specific* controls over the *general*.

In this case, *specific* IE sponsorship disclaimer requirements are embodied in their own section of statute (s. 106.071), separate and apart from the *general* political advertisement disclaimer requirements and exemptions (s. 106.143). Further, the *specific* IE sponsorship disclaimer requirement at issue expressly acknowledges that it's a *political advertisement* … "Any *political advertisement* paid for by independent expenditure…" This makes it difficult to argue that the Legislature intended to apply the exemptions of a *more general* political advertisement disclaimer to IE text messages. In further support of this conclusion is the fact that the IE section includes *verbatim* the same $10 exemption for certain novelty items that the political advertisement section contains. See ss. 106.071(3), infra, and 106.143(8). Thus, the Legislature was clearly aware of the relationship between political advertisements and IEs, and chose, for whatever reason, NOT to carry over the texting exemption to the IE section.

Electioneering Communications

An electioneering communication (EC), on the other hand, is not a political advertisement and does NOT expressly advocate for or against any candidate or issue. It is unclear whether the statutes require an EC text message to carry a sponsorship identification disclaimer; arguably, they do not.

An electioneering communication generally means a "communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or *telephone"* that:

- Refers to a clearly-identified candidate *without expressly advocating* the election or defeat of any candidate, but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;
- Is made within 30 days before a primary or 60 days before a general election; and
- Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.[6]

All ECs require a sponsorship identification disclaimer, except for certain EC telephone calls.[7]

The question of whether text messages that otherwise meet the requirements would trigger the disclaimer requirement turns on the *method of communication*; specifically, whether the term "telephone" in the definition is broad enough to embrace text messaging.

In the case of political advertisements, the Legislature has created a specific exemption from the disclaimer requirements for certain text messages. Those political advertisements must, by definition, be communicated by *"communications media,"* which in the case of text messaging means *"the Internet"* and/or *"telephone companies."*[8] Thus, the Legislature, *in the context of political advertisements*, has effectively "updated" those terms to embrace the concept of text messaging and wireless carriers.

Whether that legislative *gloss* also extends to the term "telephone" with respect to the communication of EC text messages is an open question. While it might seem like a logical extension, we are talking about two seemingly related, *but not identical,* types of communications media --- "telephone" in the case of ECs and "telephone company" in the case of political advertisements. This makes the gloss far murkier. Further, and perhaps more persuasively, the EC section (s. 106.1439, F.S.) contains a targeted telephone sponsorship disclaimer requirement (in addition to a more general one) that specifically references "calls" and "*making* the call" … terms not typically associated with *sending* text *messages*:

> (2) Any electioneering communication telephone call shall identify the persons or organization sponsoring the call by stating either: "Paid for by (insert name of persons or organizations sponsoring the call)." … This subsection does not apply to any telephone

[6] Section 106.011(8)(a), F.S.
[7] Section 106.1439, F.S. EC telephone calls in which the individual making the call is not being paid and the individuals participating in the call know each other prior to the call are exempt from the disclaimer requirement; the statute is targeted at phone bank operations.
[8] Section 106.011(4), F.S.

call in which the individual making the call is not being paid and the individuals participating in the call know each other prior to the call.[9]

Finally, the statutes contain parallel telephone disclaimer language in s. 106.147, F.S., which deals exclusively with *telephone calls* that are political advertisements and NOT text messaging. Thus, the weight of the evidence suggests that EC text messages currently may not be subject to any sponsorship identification disclaimer requirements.

III. Effect of Proposed Changes:

SB 82 requires most political advertisements, independent expenditures, and electioneering communications sent by text message to carry a sponsorship disclaimer, or a URL address or hyperlink to a website containing the disclaimer. For ease of administration and because the communications share certain characteristics, the bill incorporates these texting requirements into the existing framework in ss. 106.147 and 106.1475, F.S., addressing telephone call political advertisements.

Specifically, the bill:

- Modifies and simplifies the disclaimer language in recognition of text messaging's inherent technical limitations.
- Requires political advertisements, independent expenditures, and electioneering communications sent by text message to carry a sponsorship disclaimer identifying who paid for the message, or a URL address or hyperlink to a website containing the disclaimer. If using a URL or website, it must remain online and available to the public for at least 30 days after the date of the election at issue.
- Exempts certain text messages from disclaimer requirements, including those:
  - Text messages sent by individuals without the assistance of mass distribution technology who are not being paid; and
  - Text messages that require the recipient to sign-up or opt-in to receive them.
- Includes a number of "safe harbor" provisions for those sending the text messages, including:
  - If an exchange consists of a sequence of multiple text messages sent on the same day, the sponsorship disclaimer is only required to be included with the first text message.
  - A person or an organization is deemed to be in compliance if the required sponsorship disclaimer is included in the text message in the form in which the person or organization intended it to be sent, regardless of the form the carrier relayed it to the recipient (to account for the fact that longer text messages can sometimes be received with information out-of-order).
  - If a person or an organization includes a working hyperlink or URL in the text message as part of the required disclaimer, the person or organization is deemed to be in compliance with this subsection even if the recipient's device is incapable of accessing the referenced website.
- Mandates that those sending texts expressly advocating for or against a candidate or ballot measure that are coordinated with a candidate or campaign obtain the prior written approval of the candidate or ballot sponsor. Also, the candidate or ballot sponsor must file that approval with the appropriate qualifying officer prior to commencing texting, as is currently

[9] Section 106.1439(2), F.S.

required for coordinated telephone calls. These new mandates mirror current requirements for telephone calls.
- Requires those individuals and groups subject to texting disclaimer requirements to register and maintain an in-state registered agent for service of process as is currently required for those engaging in political advertisement telephone calls.
- Condenses and reorganizes all text message and telephone disclaimer requirements into one easily identifiable statutory section, for ease of administration.

The bill also makes a number of technical and clarifying changes to other sections of chapter 106, F.S., to conform to the changes made by the bill.

The bill takes effect 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 82 may increase the cost for private individuals and groups engaging in certain political text messaging by requiring them to have a registered agent in this state for service process. The costs are indeterminate, but expected to be minimal.

C. Government Sector Impact:

Local prosecutors and the Florida Election Commission may incur additional costs relating to enforcement and prosecuting violations. The costs are indeterminate, would appear to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some of the specific requirements relating to texting disclaimers have been adapted from California Government Code, tit. 9, § 84504.7.

Given certain similarities in their operation, the bill incorporates all the texting requirements into the existing framework for telephone banks in ss. 106.147 and 106.1475, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 106.011, 106.071, 106.143, 106.1439, 106.147, and 106.1475.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Baxley

12-00601-21 202182__

A bill to be entitled

An act relating to sponsorship identification disclaimers; amending s. 106.011, F.S.; revising the definition of the term "electioneering communication" to conform to changes made by the act; amending s. 106.071, F.S.; modifying provisions governing general independent expenditure disclaimers to conform to changes made by the act; amending s. 106.143, F.S.; removing an exemption for text messages from certain requirements governing political advertisement disclaimers to conform to changes made by the act; amending s. 106.1439, F.S.; modifying provisions governing general electioneering communications disclaimer requirements to conform to changes made by the act; amending s. 106.147, F.S.; establishing sponsorship identification disclaimer requirements for certain text messages; modifying existing requirements governing telephone call disclaimers; providing exceptions and restrictions; providing a penalty; revising the definition of the term "person" to conform to changes made by the act; amending s. 106.1475, F.S.; requiring specified persons and organizations sending certain paid text messages to have and maintain a registered agent for specified purposes; providing exceptions; providing a penalty; providing an effective date.

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

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

12-00601-21 202182__

Section 1. Paragraph (a) of subsection (8) of section 106.011, Florida Statutes, is amended to read:

106.011 Definitions.—As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(8)(a) "Electioneering communication" means a text message or communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone which ~~and that~~:

1. Refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;

2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and

3. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.

Section 2. Subsection (2) of section 106.071, Florida Statutes, is amended to read:

106.071 Independent expenditures; electioneering communications; reports; disclaimers.—

(2) Any political advertisement, other than a text message or a telephone call, paid for by an independent expenditure must ~~shall~~ prominently state "Paid political advertisement paid for by ...(Name and address of person paying for advertisement)... independently of any ...(candidate or committee)...."

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

Section 3. Paragraph (f) of subsection (10) of section 106.143, Florida Statutes, is amended to read:

106.143 Political advertisements circulated prior to election; requirements.—

(10) This section does not apply to any campaign message or political advertisement used by a candidate and the candidate's supporters or by a political committee if the message or advertisement is:

~~(f) Distributed as a text message or other message via Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive it.~~

Section 4. Section 106.1439, Florida Statutes, is amended to read:

106.1439 Electioneering communications; disclaimers.—

(1) Any electioneering communication, other than a text message or a telephone call, must ~~shall~~ prominently state: "Paid electioneering communication paid for by ...(Name and address of person paying for the communication)...."

~~(2) Any electioneering communication telephone call shall identify the persons or organizations sponsoring the call by stating either: "Paid for by ...(insert name of persons or organizations sponsoring the call)...." or "Paid for on behalf of ...(insert name of persons or organizations authorizing call)...." This subsection does not apply to any telephone call in which the individual making the call is not being paid and the individuals participating in the call know each other prior to the call.~~

(2)~~(3)~~ Any person who fails to include the disclaimer

prescribed in this section in any electioneering communication that is required to contain such disclaimer commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Section 106.147, Florida Statutes, is amended to read:

106.147 Text message and telephone solicitation; disclosure requirements; prohibitions; exemptions; penalties.—

(1)(a) Any text message or telephone call supporting or opposing a candidate, an elected public official, or a ballot measure, and any electioneering text message or telephone call, must include the phrase ~~proposal must identify the persons or organizations sponsoring the call by stating either:~~ "Paid for by ....," followed by the ~~(insert~~ name of the persons or organizations sponsoring the message or call~~)~~ or, in the case of a text message, a working hyperlink or a uniform resource locator (URL) to a website containing the required disclosure ~~"paid for on behalf of ...." (insert name of persons or organizations authorizing call)~~.

(b) A candidate's text message or telephone call must include the phrase "Paid for by," followed by the name of the candidate, then followed by the word "For," and the name of the elective office sought.

(c) A website that is hyperlinked, or identified by URL, in a text message must remain online and available to the public for at least 30 days after the date of the election in which the candidate or ballot measure that the advertisement supported or opposed was voted on.

(d)1. If an exchange consists of a sequence of multiple

text messages sent on the same day, the sponsorship disclaimer is only required to be included with the first text message.

2. A person or an organization is deemed to be in compliance with this subsection if the sponsorship disclaimer required by this subsection is included in the text message in the form in which the person or organization intended it to be sent, regardless of the form the carrier relayed it to the recipient.

3. If a person or an organization includes a working hyperlink or URL in the text message as part of the required disclaimer, the person or organization is deemed to be in compliance with this subsection even if the recipient's device is incapable of accessing the referenced website.

(e) This subsection ~~paragraph~~ does not apply to any:

1. Telephone call:

a. In which both the individual making the call is not being paid and the individuals participating in the call know each other before ~~prior to~~ the call; or

b. That is a part of a series of like telephone calls consisting of fewer than 1,000 completed calls averaging more than 2 minutes in duration which are conducted for the purpose of polling respondents regarding a candidate or an elected public official.

2. Text message:

a. In which both the individual sending the text message is not being paid and the text is individually sent without the assistance of mass distribution technology, including a text messaging platform; or

b. That requires the recipient to sign up or opt in to

receive it.

~~(b) Any telephone call conducted for the purpose of polling respondents concerning a candidate or elected public official which is a part of a series of like telephone calls that consists of fewer than 1,000 completed calls and averages more than 2 minutes in duration is presumed to be a political poll and not subject to the provisions of paragraph (a).~~

(2)~~(c)~~ A text message or a ~~No~~ telephone call may not ~~shall~~ state or imply that the caller:

(a) Represents any person or organization unless the person or organization so represented has given specific approval in writing to make such representation; or~~.~~

~~(d) No telephone call shall state or imply that the caller~~

(b) Represents a nonexistent person or organization.

(3)~~(2)~~ Any text message or telephone call, not conducted by independent expenditure, which expressly advocates for or against a candidate or ballot measure ~~proposal~~ requires prior written authorization by the candidate or sponsor of the ballot measure ~~proposal~~ that the text message or telephone call supports. A copy of such written authorization must be placed on file with the qualifying officer by the candidate or sponsor of the ballot measure before ~~proposal prior to~~ the time the text messages or telephone calls commence.

(4)(a)~~(3)(a)~~ Any person who willfully violates ~~any provision of~~ this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) For purposes of paragraph (a), the term "person" includes any individual or organization making an independent expenditure; any candidate; any officer of any political

committee, affiliated party committee, or political party executive committee; any officer, partner, attorney, or other representative of a corporation, partnership, or other business entity; and any agent or other person acting on behalf of any candidate, political committee, affiliated party committee, political party executive committee, or corporation, partnership, or other business entity.

Section 6. Section 106.1475, Florida Statutes, is amended to read:

106.1475 Text message and telephone solicitation; registered agent requirements; penalty.—

(1) Any person or organization that conducts ~~any~~ business in this state consisting of sending text messages or placing telephone calls that are subject to the disclaimer requirements in s. 106.147 ~~which consists of making paid telephone calls supporting or opposing any candidate or elected public official~~ must, prior to conducting such business, have and continuously maintain, for at least 180 days following the cessation of such business activities in the state, a registered agent for the purpose of any service of process, notice, or demand required or authorized by law and must file with the division a notice of such registered agent. Such registered agent must be an individual who is a resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state. However, this subsection does not apply to any person or organization already lawfully registered to conduct business in this state.

(2) For purposes of this section, conducting business in this state as specified in subsection (1) includes both sending

text messages or placing telephone calls from a location in this state and sending text messages or placing telephone calls from a location outside this state to individuals located in this state.

(3)(a) The division shall create and maintain forms for the notice required by subsection (1), which, at a minimum, must elicit all of the following information:

1. The name, address, and telephone number of the registered agent.

2. The name, address, and telephone number of the person or organization conducting business in this state as specified in subsection (1).

(b) The person or organization conducting business in this state as specified in subsection (1) must immediately notify the division of any changes in the information required in paragraph (a).

(4) Any person or organization that violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. This act shall take effect October 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

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

SENATOR DENNIS BAXLEY
12th District

March 3, 2021

The Honorable Chair Kathleen Passidomo
400 Senate Office Building
Tallahassee, FL 32399

Dear Chair Passidomo,

I would like to request that SB 82 Sponsorship Identification Disclaimers be heard in the next Rules Committee meeting.

This bill creates a comprehensive sponsorship disclaimer policy for most text message political advertisements, independent expenditures, and electioneering communications. Text messages must carry a sponsorship disclaimer, or a URL address or hyperlink to a website containing the disclaimer.

SB 82 will specifically exempts texts sent by individuals not being paid and without the assistance of mass distribution technology or that require the recipient to sign-up or opt-in to receive it.

I appreciate your favorable consideration.

Onward & Upward,

Dennis K Baxley

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

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

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WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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 96
INTRODUCER:	Rules Committee; Children, Families, and Elder Affairs Committee; Senators Book and Brodeur
SUBJECT:	Child Welfare
DATE:	March 29, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Fav/CS**
2.	Sneed	Sadberry	AP	**Favorable**
3.	Moody	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 permits the Child Protective Team (CPT) medical director to designate a member of that team to participate in the

investigation, and permits investigations to be conducted remotely in specified circumstances. The preliminary CIRRT report for investigations of child sexual abuse is due within 45 days from the date the investigation begins.

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 and the Department of Health (DOH) project 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 was the subject of a verified report of abuse or neglect in the previous 6 months and is currently placed in out-of-home care. The DCF[1] estimates the need for an additional positions to conduct the additional 293 CIRRTs required by the bill. Further, the DOH reports that there will likely be an increased fiscal impact as a result of the increased CIRRTs.

[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).

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.

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 2010[5] 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.

[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 25, 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 25, 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 25, 2021).
[7] 42 U.S.C. ch. 67.
[8] 42 U.S.C. s. 5106a(1)(A) and (b)(2)(B)(i).

Central Abuse Hotline

The DCF is required to operate and maintain a central abuse hotline[9] to receive mandatory reports of known or suspected instances of child abuse,[10] abandonment,[11] or neglect,[12] or 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 reporting[14] 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

[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 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.

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]

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]

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[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.
[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.

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 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

[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.*
[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.*

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.

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]

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[39] Section 39.201(2)(l), F.S.

[40] Section 39.201(5), F.S.

[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.

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 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]

[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.
[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.

Education Practices Commissions

Current law provides the Education Practices Commission (EPC) with authority to discipline specified instructional personnel[52] and school administrators[53] 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
  - 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.

<u>Operation and Maintenance (Section 1)</u>

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

[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.

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 provider[57] or a public school prekindergarten provider;[58]
- At a public K-12 school;[59]
- At a private school;[60] or
- 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:

[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 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.

- 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 investigators[64] will need to be amended to reflect new rules, definitions, and provisions contained in the proposed bill.

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 child[65] to the hotline:

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[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.

[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.

- 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 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]

[66] Section 39.302(1), F.S.
[67] *Id.*
[68] *Id.*
[69] Section 39.302(1), F.S.
[70] Section 39.302(2)(b), F.S.
[71] *Id.*
[72] *Id.*

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 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 six deaths of children who have verified prior reports of the child or family in the past 12 months.[81] Of the six investigations, a 1 ½ year old child's cause of death was

[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.
[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 25, 2021).

determined to be drowning but the report is pending, and the cause of death for one child who is younger than 1 year old is sleep related.[82] The other four 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 is placed in out-of-home care in the department's custody and was the subject of a verified report of suspected abuse or neglect during the previous 6 months. Only one investigation is required for allegations of sexual abuse that relate to the same act regardless of the number of reports.

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. The CPT medical director may designate a member of that team to participate in the investigation as his or her designee.

The preliminary CIRRT report for allegations of child sexual abuse are required to be completed within 45 days, rather than the 30 day deadline that is required for preliminary CIRRT reports due in child death investigations.

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 exempt[85] 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:

- 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;

[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.*

- 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 animal[90] abuse and harm to other persons.[91] Statistics support a connection between animal cruelty and violence against other humans:

- 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

[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 25, 2021).
[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 March 25, 2021).

- 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 citation[98] 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 cruelty[100] 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.

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

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[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 March 25, 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 25, 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 25, 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.
[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_awap&=&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%

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 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

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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%E2%80%9CThe%20care%20pets%20within%20child%20abusing%20families.%E2%80%9D%20International%20Journal%20Study%20Animal%20Problems%22 (last visited March 25, 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 25, 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 25, 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 25, 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 25, 2021).

[112] *Id.*

- 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 of 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.

Sexual Performance by a Child

A person is also guilty of a second degree felony[117] if he or she, knowing the character and content, promotes[118] a sexual performance[119] by a child, who is younger than 18 years old, and produces, directs, or promotes a performance[120] that includes any sexual conduct.[121]

"Sexual conduct" means the actual or simulated[122] sexual intercourse, deviate sexual intercourse,[123] sexual bestiality, masturbation, or sadomasochistic abuse;[124] actual lewd

[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.
[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.

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 battery[125] 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]

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 investigation[134] 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

[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.*
[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.

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.
- 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.

[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.
[140] *See* s. 775.082, F.S.
[141] Section 921.0022(3), F.S.

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 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 identity 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.

[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.

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
- 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.

[144] The DCF SB 7000 (2020) Analysis at p. 3.
[145] *Id.*

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 traditional legal practice in the United States is to have a solo attorney represent a client, the MLRM promotes a team of individuals, including social workers and parent advocates.[147] A study by the Bronx Defenders that examined more than 28,000 New York dependency cases between 2007 and 2014 found that full implementation of the MLRM would have saved an estimated $40 million per year for the foster care system.[148] This same study suggests that representation that utilized the multidisciplinary model were able to safely reunify children with their families 43 percent more often in their first year than solo practitioners, and 25 percent more often in the second year.[149]

The OCCCRC Fourth District of Florida currently has a Social Services Unit (SSU) it employs to enhance the legal representation to indigent parents in dependency cases.[150] The SSU includes a forensic social worker or forensic family advocate who are on the legal team to engage parents and guide them through the reunification process.[151] The OCCCRC reports the SSU assist clients with tasks such as providing information about and interacting with providers, and describes the SSU's inclusion in the legal team as beneficial.[152]

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[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 25, 2021) (hereinafter cited as "CBE Building Multidisciplinary Teams").
[147] *See Id.* Children's Bureau Express, *New Study Shows Providing Parents with Multidisciplinary Legal Representation in Child Welfare Cases furthers Everyone's Interests*, July/August 2019, available at https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=208&sectionid=2&articleid=5378 (last visited March 25, 2021) (hereinafter cited as "CBE New Study").
[148] NYU Law, *Providing Parents with the Right Kind of Legal Representation in Child Welfare Cases Significantly Reduces the Time Children Stay in Foster Care, New Study Finds*, May 7, 2009, available at https://www.law.nyu.edu/martin-guggenheim-interdisciplinary-parental-representation-child-welfare (last visited March 25, 2021) (hereinafter cited as "NYU Article").
[149] *Id.*
[150] The OCCCRC Fourth District of Florida, *Social Services Unit*, available at http://www.rc-4.com/social-services.shtml (last visited March 25, 2021).
[151] *Id.*
[152] *Id.*

Family First Prevention Services Act

In 2018, Congress enacted the Family First Prevention Services Act (FFPSA) aimed at providing financial assistance with a focus on prevention services and limiting funds for residential group care.[153] Title IV-E federal funding is now available for legal representation and advocacy for eligible children in foster care and their parents.[154] The FFPSA:

- Includes an option to use funds for up to 12 months for evidence-based services, such as substance abuse treatment;
- Provides that eligible candidates include children who can remain safely in the home with the provision of services; children in foster care who are parents; or parents or caregivers who require services to prevent a child's entry into foster care;
- Requires states to prepare a prevention plan for the child to safely remain at a home with services; and
- 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 an 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

[153] The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at http://centerforchildwelfare.fmhi.usf.edu/FFPSA.shtml (last visited March 25, 2021).
[154] U.S. Department of Health and Human Services, Administration for Children and Families, *High Quality Memo*, p. 10-11, January 14, 2021, available at https://www.courts.ca.gov/documents/ffdrp_acf2021_high_quality_memo.pdf (last visited March 25, 2021).
[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 25, 2021).

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 FSFN identification number,[156] if applicable;
- 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.

[156] The FSFN 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. *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 25, 2021).

The bill authorizes the OCCCRC to adopt rules to administer this section.

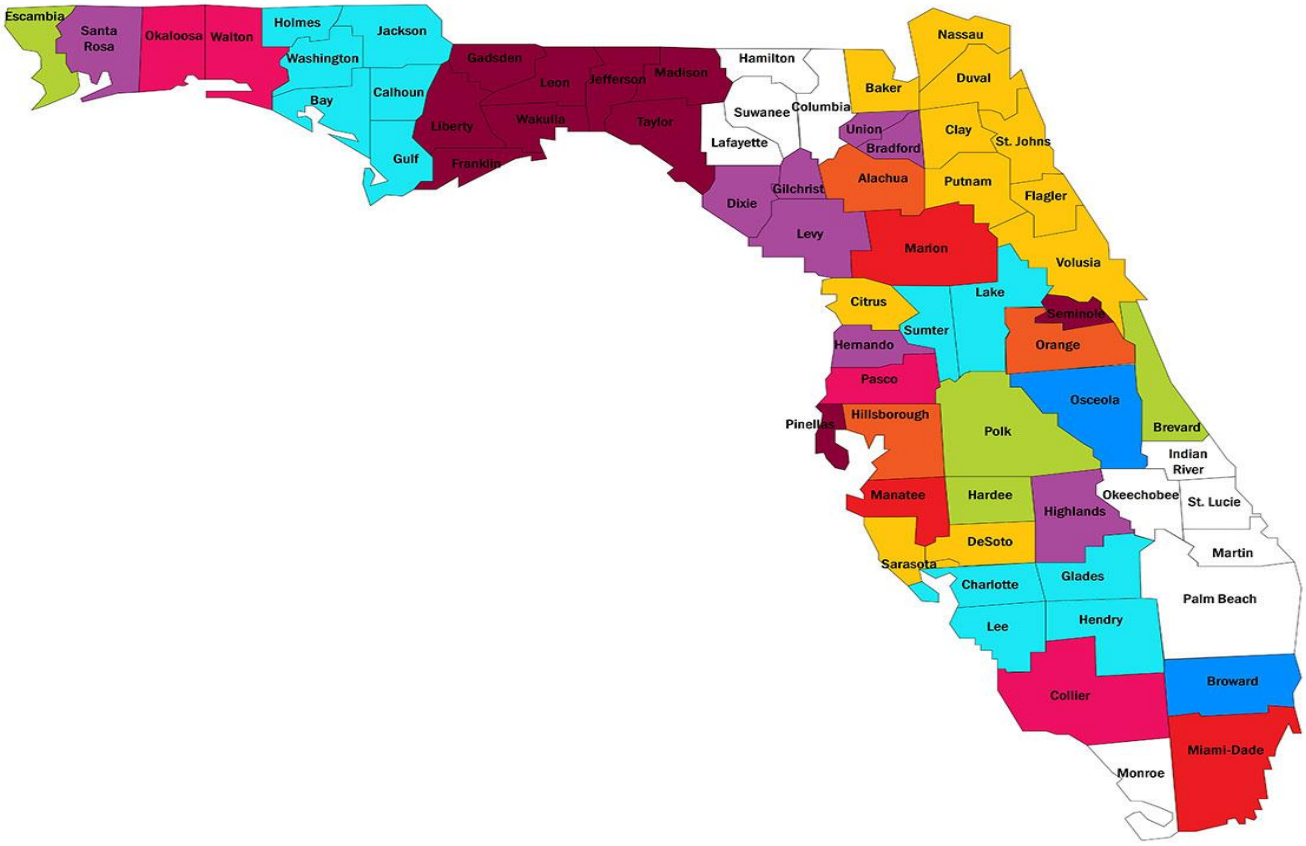
Child Advocacy Centers (Section 8)

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 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

[157] Section 39.3035(1), F.S.
[158] FNCAC, *About Us*, available at https://www.fncac.org/about-us (last visited March 25, 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.
[162] Section 39.3035(3)(c), F.S.
[163] FNCAC, About Us.
[164] *Id.*

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:

- 20,259 received therapy services;
- 17,297 received crisis intervention services;
- 11,120 medical evaluations; and
- 10,675 forensic/specialized interviews.[167]

[165] FNCAC, *County Coverage Map*, available at https://www.fncac.org/county-coverage-map (last visited March 25, 2021).
[166] FNCAC, *What is a CAC*, available at https://www.fncac.org/what-cac (last visited March 25, 2021).
[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 March 25, 2021).

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 agencies[170] (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]

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]

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[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 25, 2011).
[171] Section 409.1415(2)(a), F.S.
[172] Section 409.1415(2)(b), F.S.
[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 25, 2021).
[174] *Id.*
[175] *Id.*

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
  - 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

[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 25, 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 25, 2021).

[178] Section 409.1753, F.S.

[179] Section 409.1415(3)(a), F.S.

- 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[180] Section 409.1415(3)(b)1., F.S.

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:

CIRRTs (Section 3)

The bill expands the use of the CIRRT process by requiring the deployment of a CIRRT for every report of allegations of sexual abuse of a child if the child is currently placed in out-of-home care in the DCF's custody and was the subject of a verified report of abuse or neglect in the previous 6 months. The DCF estimates that a CIRRT will need to be deployed an additional 293 times based on the bill and it will need 11 FTE positions (7 coordinators, 3 supervisors, and 1 manager) to conduct additional CIRRTs. The DCF anticipates the total cost of this provision is $1,140,475 ($1,091,547.18 recurring and $48,928 nonrecurring).[182] The bill permits the CIRRTs to be conducted remotely in certain circumstances, which will result in the avoidance of travel costs.

The Department of Health (DOH) provides that the expansion of the CIRRT process will result in a significant financial impact to the DOH. Given the requirement for Local CPT Medical Director involvement, additional funding would be needed to expand the number of hours to cover CPT Medical Directors involved in CIRRTs. The DOH states that it expects there will likely be approximately $468,800 fiscal impact to the DOH based on the estimation from the DCF of an additional 293 CIRRTs per year. Further, the bill permits the Children's Medical Director to appoint a designee to represent him or her on the CIRRT. The DOH states the fiscal impact may be reduced by the ability to designate attendance to the CIRRT to an APRN instead of the local CPT Medical Director.[183]

Multidisciplinary Legal Representation Model (Section 9)

The bill also authorizes the OCCCRC to implement a multidisciplinary legal representation model program. The program will enable the DCF to draw federal Title

[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 CS/CS/SB 96*, p. 9-10, March 25, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[183] The Department of Health, *Agency Analysis for SB 96*, p. 5, March 24, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 agencies.[184] 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.

Cross-Reporting Training (Section 6)

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 stated that the training would result in a one-time cost approximately $35,000 to develop.[185]

Activities Involving Animals (Section 15)

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/CS by Rules on March 25, 2021:
The committee substitute:

[184] The DCF SB 96 Analysis at p. 4.
[185] The DCF SB7000 (2020) Analysis at p. 7–8.

- Limits CIRRT investigations relating to reports of child sexual abuse allegations that are received by the DCF for children who are in out-of-home care if the child was the subject of a verified abuse report during the previous 6 months;
- Requires only one team be deployed for an allegation of child sexual abuse based on the same act;
- Permits the CPT medical director to designate a member of that team to participate in the investigation as his or her designee;
- Permits CIRRT members to conduct all or part of the investigation remotely in specified instances; and
- Modifies the preliminary CIRRT report deadline to 45 days, rather than 30 days, after the investigation begins for reports of child sexual abuse.

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.

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LEGISLATIVE ACTION

Senate	.	House
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03/25/2021	.	
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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

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received by the department. This includes any alleged incident involving

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LEGISLATIVE ACTION

Senate	.	House
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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.—

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(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

586-02354-21 202196c1

A bill to be entitled

An act relating to child welfare; creating s. 39.101, F.S.; transferring existing provisions relating to the central abuse hotline of the Department of Children and Families; providing additional requirements relating to the hotline; revising requirements for certain statistical reports that the department is required to collect and analyze; amending s. 39.201, F.S.; revising when a person is required to report to the central abuse hotline; requiring animal control officers and certain agents to provide their names to hotline staff; requiring central abuse hotline counselors to advise reporters of certain information; requiring counselors to receive specified periodic training; revising requirements relating to reports of abuse involving impregnation of children; providing requirements for the department when handling reports of child abuse, neglect, or abandonment by a parent or caregiver and reports of child-on-child sexual abuse; amending s. 39.2015, F.S.; specifying serious incidents for which the department is required to provide an immediate multiagency investigation; requiring an immediate onsite investigation by a critical incident rapid response team when reports are received by the department containing allegations of the sexual abuse of certain children; revising membership of multiagency teams; amending s. 39.202, F.S.; expanding the authorization of access to certain confidential records to include members of standing or

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Florida Senate - 2021 CS for SB 96

586-02354-21 202196c1

select legislative committees, upon request, within a specified timeframe; amending s. 39.205, F.S.; providing construction; specifying that certain persons are not relieved from the duty to report by notifying a supervisor; creating s. 39.208, F.S.; providing legislative findings and intent; providing responsibilities for child protective investigators relating to animal cruelty; providing criminal, civil, and administrative immunity to child protective investigators who report known or suspected animal cruelty; providing responsibilities for animal control officers relating to child abuse, abandonment, and neglect; providing criminal penalties; requiring the department to develop training in consultation with the Florida Animal Control Association which relates to child and animal cruelty; providing requirements for such training; requiring the department to adopt rules; amending s. 39.302, F.S.; conforming cross-references; authorizing certain persons to be represented by an attorney or accompanied by another person under certain circumstances during institutional investigations; providing requirements relating to institutional investigations; amending s. 39.3035, F.S.; providing a description of child advocacy centers; creating s. 39.4092, F.S.; providing legislative findings; 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;

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requiring the department to collaborate with the office to implement a program and provide funding; specifying program requirements; defining the term "parent-peer specialist"; requiring each region that establishes a multidisciplinary legal representation model program to submit an annual report by a certain date to the Office of Program Policy Analysis and Government Accountability; requiring the office to compile the reports and include such information in a specified report sent to the Governor and the Legislature by a specified date; authorizing the office of criminal conflict and civil regional counsel to adopt rules; amending s. 409.1415, F.S.; requiring the department to make available specified training for caregivers on the life skills necessary for children in out-of-home care; requiring the department to establish the Foster Information Center for specified purposes; requiring community-based care lead agencies to provide certain information and resources to kinship caregivers and to provide specified assistance to such caregivers; requiring lead agencies to provide caregivers with a certain telephone number; repealing s. 409.1453, F.S., relating to the design and dissemination of training for foster care caregivers; repealing s. 409.1753, F.S.; relating to duties of the department relating to foster care; providing legislative intent; amending s. 827.071, F.S.; renaming the term "sexual bestiality" as "sexual contact with an animal" and redefining the

term; amending s. 828.126, F.S.; revising and defining terms; revising prohibitions relating to sexual conduct and sexual contact with an animal; revising criminal penalties; requiring a court to issue certain orders; revising applicability; amending s. 828.27, F.S.; requiring county and municipal animal control officers to complete specified training; requiring that animal control officers be provided with opportunities to attend such training during normal work hours; amending s. 921.0022, F.S.; assigning an offense severity ranking for sexual activities involving animals; amending s. 1012.795, F.S.; requiring the Education Practices Commission to suspend the educator certificate of instructional personnel and school administrators for failing to report known or suspected child abuse under certain circumstances; amending ss. 39.301, 119.071, 322.09, and 934.03, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 39.101, Florida Statutes, is created to read:

39.101 Central abuse hotline.—The central abuse hotline is the first step in the safety assessment and investigation process.

(1) ESTABLISHMENT AND OPERATION.—

(a) The department shall operate and maintain a central

abuse hotline capable of receiving all reports of known or suspected child abuse, abandonment, or neglect and reports that 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. The hotline must accept reports 24 hours a day, 7 days a week, and such reports must be made in accordance with s. 39.201. The central abuse hotline must be capable of accepting reports made in accordance with s. 39.201 in writing, through a single statewide toll-free telephone number, or through electronic reporting. Any person may use any of these methods to make a report to the central abuse hotline.

(b) The central abuse hotline must be operated in such a manner as to enable the department to:

1. Accept reports for investigation when there is a reasonable cause to suspect that a child has been or is being abused or neglected or has been abandoned.

2. Determine whether the allegations made by the reporter require an immediate or a 24-hour response priority in accordance with subsection (2).

3. Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through the use of the department's automated tracking system.

4. Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.

5. When appropriate, refer calls that do not allege the abuse, neglect, or abandonment of a child to other organizations that may better resolve the reporter's concerns.

6. Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subjected to abuse, abandonment, or neglect.

7. Initiate and enter into agreements with other states for the purposes of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.

8. Promote public awareness of the central abuse hotline through community-based partner organizations and public service campaigns.

(2) TIMELINES FOR INITIATING INVESTIGATION.—Upon receiving a report to the central abuse hotline, the department must determine the timeframe in which to initiate an investigation pursuant to chapter 39. An investigation must be commenced:

(a) Immediately, regardless of the time of day or night, if it appears that:

1. The immediate safety or well-being of a child is endangered;

2. The family may flee or the child may be unavailable for purposes of conducting a child protective investigation; or

3. The facts reported to the central abuse hotline otherwise so warrant.

(b) Within 24 hours after receipt of a report that does not involve the criteria specified in paragraph (a).

(3) COLLECTION OF INFORMATION AND DATA.—The department shall:

(a)1. Voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment and

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).

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.—

(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)(q).

(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

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

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

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

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

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

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

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

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

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,

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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from abuse and neglect, providing needed support to families, and protecting animals.

(b) The Legislature finds that education and training for child 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.

(c) Therefore, it is the intent of the Legislature to require reporting and cross-reporting protocols and collaborative training between child protective services and animal control services personnel to help protect the safety and well-being of children, their families, and their animals.

(2) RESPONSIBILITIES OF CHILD PROTECTIVE INVESTIGATORS.—

(a) Any person who is required to investigate child abuse, abandonment, or neglect under this chapter and who, while acting in his or her professional capacity or within the scope of employment, knows or has reasonable cause to suspect that animal cruelty has occurred at the same address shall report such knowledge or suspicion within 72 hours to his or her supervisor for submission to a local animal control agency. The report must include all of the following information:

1. A description of the animal and of the known or suspected animal cruelty.

2. The name and address of the animal's owner or keeper, if that information is available to the child protective investigator.

3. Any other information available to the child protective investigator which might assist an animal control officer or law enforcement officer in establishing the cause of the animal

cruelty and the manner in which it occurred.

(b) A child protective investigator who makes a report under this section is presumed to have acted in good faith. An investigator acting in good faith who makes a report under this section or who cooperates in an investigation of suspected animal cruelty is immune from any civil or criminal liability or administrative penalty or sanction that might otherwise be incurred in connection with making the report or otherwise cooperating.

(3) RESPONSIBILITIES OF ANIMAL CONTROL OFFICERS.—Any person who is required to investigate animal cruelty under chapter 828 and who, while acting in his or her professional capacity or within the scope of employment, knows or has reasonable cause to suspect that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare or that a child is in need of supervision and care and does not have a parent, a legal custodian, or a responsible adult relative immediately known and available to provide supervision and care to that child shall immediately report such knowledge or suspicion to the department's central abuse hotline.

(4) PENALTIES.—

(a) A child protective investigator who is required to report known or suspected animal cruelty under subsection (2) and who knowingly and willfully fails to do so commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) An animal control officer who observes, in the course of his or her duties, known or suspected abuse, neglect, or

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

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

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

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

centers bring together, often in one location, child protective investigators, law enforcement, prosecutors, and medical and mental health professionals to provide a coordinated, comprehensive response to victims and their caregivers.

(4) ~~(3)~~ A child advocacy center within this state may not receive the funds generated pursuant to s. 938.10, state or federal funds administered by a state agency, or any other funds appropriated by the Legislature unless all of the standards of subsection (2) ~~(1)~~ are met and the screening requirement of subsection (3) ~~(2)~~ is met. The Florida Network of Children's Advocacy Centers, Inc., shall be responsible for tracking and documenting compliance with subsections (2) and (3) ~~(1) and (2)~~ for any of the funds it administers to member child advocacy centers.

(a) Funds for the specific purpose of funding children's advocacy centers shall be appropriated to the Department of Children and Families from funds collected from the additional court cost imposed in cases of certain crimes against minors under s. 938.10. Funds shall be disbursed to the Florida Network of Children's Advocacy Centers, Inc., as established under this section, for the purpose of providing community-based services that augment, but do not duplicate, services provided by state agencies.

(b) The board of directors of the Florida Network of Children's Advocacy Centers, Inc., shall retain 10 percent of all revenues collected to be used to match local contributions, at a rate not to exceed an equal match, in communities establishing children's advocacy centers. The board of directors may use up to 5 percent of the remaining funds to support the

activities of the network office and must develop funding criteria and an allocation methodology that ensures an equitable distribution of remaining funds among network participants. The criteria and methodologies must take into account factors that include, but need not be limited to, the center's accreditation status with respect to the National Children's Alliance, the number of clients served, and the population of the area being served by the children's advocacy center.

(c) At the end of each fiscal year, each children's advocacy center receiving revenue as provided in this section must provide a report to the board of directors of the Florida Network of Children's Advocacy Centers, Inc., which reflects center expenditures, all sources of revenue received, and outputs that have been standardized and agreed upon by network members and the board of directors, such as the number of clients served, client demographic information, and number and types of services provided. The Florida Network of Children's Advocacy Centers, Inc., must compile reports from the centers and provide a report to the President of the Senate and the Speaker of the House of Representatives in August of each year.

Section 9. Section 39.4092, Florida Statutes, is created to read:

39.4092 Multidisciplinary legal representation model program for parents of children in the dependency system.—

(1) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that the use of a specialized team that includes a lawyer, a social worker, and a parent-peer specialist, also known as a multidisciplinary legal representation model, in dependency judicial matters is

effective in reducing safety risks to children and providing families with better outcomes, such as significantly reducing the time such children spend in out-of-home care and achieving permanency more quickly.

(b) The Legislature finds that parents in dependency court often suffer from multiple challenges, such as mental illness, substance use disorder, domestic violence and other trauma, unstable housing, and unemployment. Such issues are often a contributing factor to children experiencing instability or safety risks. While these issues may result in legal involvement or require legal representation, addressing such underlying challenges in a manner that achieves stability often falls within the core functions of the practice of social work.

(c) The Legislature also finds that social work professionals have a unique skill set, including client assessment and clinical knowledge of family dynamics. This unique skill set allows these professionals to interact and engage with clients in meaningful and unique ways that are distinct from the ways in which the clients interact with attorneys or other professional staff involved with dependency matters. Additionally, social work professionals are skilled at quickly connecting families facing such crises to resources that can address the specific underlying challenges.

(d) The Legislature finds that there is a great benefit to using parent-peer specialists in the dependency system, which allows parents who have successfully navigated the dependency system and have been successfully reunified with their children to be paired with parents whose children are currently involved in the dependency system. By working with someone who has

personally lived the experience of overcoming great personal crisis, parents currently involved in the dependency system have a greater ability to address the underlying challenges that resulted in the instability and safety risk to the children, provide a safe and stable home environment, and be successfully reunified.

(e) The Legislature further finds that current federal provisions authorize the reimbursement of half the cost of attorneys for parents and children in eligible cases, whereas such funds were formerly restricted to foster care administrative costs.

(f) The Legislature finds it is necessary to encourage and facilitate the use of a multidisciplinary legal representation model for parents and their children in order to improve outcomes for those families involved in the dependency system and provide the families who find themselves in a crisis the best opportunity to be successful in creating safe and stable homes for their children.

(2) ESTABLISHMENT.—Each office of criminal conflict and civil regional counsel established under s. 27.511 may establish a multidisciplinary legal representation model program to serve families who are in the dependency system. The department shall collaborate with the office of criminal conflict and civil regional counsel to implement a program and provide funding with available federal matching resources for such multidisciplinary legal representation model programs for eligible families involved in the dependency system.

(3) PROGRAM REQUIREMENTS.—Any multidisciplinary legal representation model program established must, at a minimum:

(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.—

(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

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.

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

agencies.

6. The department and community-based care lead agency must provide a caregiver with the services and support they need to enable them to provide quality care for the child pursuant to subsection (3).

7. Once a caregiver accepts the responsibility of caring for a child, the child may be removed from the home of the caregiver only if:

a. The caregiver is clearly unable to safely or legally care for the child;

b. The child and the birth or legal parent are reunified;

c. The child is being placed in a legally permanent home in accordance with a case plan or court order; or

d. The removal is demonstrably in the best interests of the child.

8. If a child must leave the caregiver's home for one of the reasons stated in subparagraph 7., and in the absence of an unforeseeable emergency, the transition must be accomplished according to a plan that involves cooperation and sharing of information among all persons involved, respects the child's developmental stage and psychological needs, ensures the child has all of his or her belongings, allows for a gradual transition from the caregiver's home, and, if possible, allows for continued contact with the caregiver after the child leaves.

9. When the case plan for a child includes reunification, the caregiver, the department, and the community-based care lead agency must work together to assist the birth or legal parent in improving his or her ability to care for and protect the child and to provide continuity for the child.

10. A caregiver must respect and support the child's ties to his or her birth or legal family, including parents, siblings, and extended family members, and must assist the child in maintaining allowable visitation and other forms of communication. The department and community-based care lead agency must provide a caregiver with the information, guidance, training, and support necessary for fulfilling this responsibility.

11. A caregiver must work in partnership with the department and community-based care lead agency to obtain and maintain records that are important to the child's well-being, including, but not limited to, child resource records, medical records, school records, photographs, and records of special events and achievements.

12. A caregiver must advocate for a child in his or her care with the child welfare system, the court, and community agencies, including schools, child care providers, health and mental health providers, and employers. The department and community-based care lead agency must support a caregiver in advocating for a child and may not retaliate against the caregiver as a result of this advocacy.

13. A caregiver must be as fully involved in the child's medical, psychological, and dental care as he or she would be for his or her biological child. The department and community-based care lead agency must support and facilitate such participation. The caregiver, the department, and the community-based care lead agency must share information with each other about the child's health and well-being.

14. A caregiver must support a child's school success,

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,

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.

(4) ~~(3)~~ RULEMAKING.—The department shall adopt rules necessary to administer this section.

Section 11. Section 409.1453, Florida Statutes, is repealed.

Section 12. Section 409.1753, Florida Statutes, is repealed.

Section 13. The Legislature recognizes that animal cruelty of any kind is a type of interpersonal violence and often co-occurs with child abuse and other forms of family violence, including elder abuse and domestic violence, and that early identification of animal cruelty, including animal sexual abuse, serves the purpose of providing an important tool to safeguard children from abuse and neglect, to provide needed support to families, and to protect animals.

Section 14. Section 827.071, Florida Statutes, is amended to read:

827.071 Sexual performance by a child; penalties.—

(1) As used in this section, the following definitions shall apply:

(a) "Deviate sexual intercourse" means 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.

(b) "Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional 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.

(c) "Performance" means any play, motion picture,

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photograph, or dance or any other visual representation exhibited before an audience.

(d) "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 or agree to do the same.

(e) "Sadomasochistic abuse" means 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.

(f) "Sexual battery" means 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.

(g) "Sexual contact with an animal" has the same meaning as in s. 828.126 when an adult encourages or forces such act to be committed between a child and an animal ~~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~~.

(h) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual contact with an animal ~~bestiality~~, masturbation, or sadomasochistic abuse; 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 a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or

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simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(i) "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(j) "Simulated" means the explicit depiction of conduct set forth in paragraph (h) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or

in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this

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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animals are present; and from engaging in an occupation, whether paid or unpaid, or participating in a volunteer position at any establishment where animals are present. The order may be effective for up to 5 years from the date of the conviction regardless of whether adjudication is withheld.

(5)~~(4)~~ This section does not apply to accepted animal husbandry practices, accepted conformation judging practices, ~~or~~ accepted veterinary medical practices, or artificial insemination of an animal for reproductive purposes.

Section 16. Paragraph (a) of subsection (4) of section 828.27, Florida Statutes, is amended to read:

828.27 Local animal control or cruelty ordinances; penalty.—

(4)(a)1. County-employed animal control officers must, and municipally employed animal control officers may, successfully complete a 40-hour minimum standards training course. Such course must include, but is not limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations. The course curriculum must be approved by the Florida Animal Control Association. An animal control officer who successfully completes such course shall be issued a certificate indicating that he or she has received a passing grade.

2. County-employed and municipally employed animal control officers must successfully complete the 1-hour training course developed by the Department of Children and Families and the Florida Animal Control Association pursuant to s. 39.208(5). Animal control officers must be provided with opportunities to attend the training during their normal work hours.

3.~~2.~~ Any animal control officer who is authorized before January 1, 1990, by a county or municipality to issue citations is not required to complete the minimum standards training course.

4.~~3.~~ In order to maintain valid certification, every 2 years each certified animal control officer must complete 4 hours of postcertification continuing education training. Such training may include, but is not limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations.

Section 17. Paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services

		requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic

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		battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.

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784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or

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		vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.

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810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $750 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

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817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.

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827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
828.126	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of

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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. 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

abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, 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.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; 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.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state

regulatory requirement violations; 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.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the

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

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,

juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of 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.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current

or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; 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.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties

result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of 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.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, 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. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2) ~~s. 39.3035(1)~~ and fulfills the screening requirement of s. 39.3035(3) ~~s. 39.3035(2)~~, and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such

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

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;

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

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 16, 2021

I respectfully request that **Senate Bill 96**, relating to Child Welfare, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you for your consideration.

Lauren Book

Senator Lauren Book
Florida Senate, District 32

File signed original with committee office

S-020 (03/2004)

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THE FLORIDA SENATE

APPEARANCE RECORD

03/25/2021
Meeting Date

96
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Child Welfare - 2021

Name Candice Brower

Job Title Regional Counsel, 1st DCA

Address 235 South Main Street, Suite 205
Street

Gainesville Florida 32601
City *State* *Zip*

Phone 352-377-0567

Email candice.brower@rc1.myflorida.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Offices of Criminal Conflict and Civil Regional Counsel

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

96
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Child Welfare

Name Kate Macfall

Job Title state director

Address 1206 Walton Dr.
Street

Tallahassee FL. 32312
City *State* *Zip*

Phone 850 508-1001

Email kmacfall@hsus.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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

SB 96
Bill Number (if applicable)

Topic SB 96 child welfare

Amendment Barcode (if applicable)

Name Sara Clements

Job Title SVP McGuirewoods

Address 115 E Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-727-5000

Email Sclements@mwe.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Foster and Adoptive Parent Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

SB 96
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 96 Child Welfare

Name Edeline Joseph-Theophile

Job Title

Address 1747 Orlando Central Pkwy
Street

Phone 407-855-7604

Orlando FL 32809
City *State* *Zip*

Email edelinejt.pta@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

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.

This information was not read into the record by the Chair

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 148
INTRODUCER:	Regulated Industries Committee and Senator Bradley
SUBJECT:	Beverage Law
DATE:	March 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Reeve	McKay	CM	**Favorable**
3.	Oxamendi	Phelps	RC	**Favorable**

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]

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[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 carriers[9] 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.

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

719554

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/25/2021	.	
	.	
	.	
	.	

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

repealing ss. 564.05 and 564.055, F.S., relating to limitations on the sizes of wine containers and cider containers, respectively;

By the Committee on Regulated Industries; and Senator Bradley

580-02162-21 2021148c1

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,

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

580-02162-21 2021148c1

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

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

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

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

beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall 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 section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. 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.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-

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

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:

561.575 Food service establishments; off-premises consumption of alcoholic beverages.—

(1) Notwithstanding any other law, a public food service establishment licensed under s. 561.20(2)(a)4. may sell manufacturer-sealed containers of wine, containers of malt beverages, or any alcoholic beverage drink prepared by the vendor, including any wine-based and liquor-based drinks, sold in containers sealed by the licensee or its employees for consumption off of the licensed premises if accompanied by the sale of food within the same order. The container for any alcoholic beverage sold or delivered for consumption off the premises pursuant to this section may not exceed 32 ounces. An alcoholic beverage drink prepared by the vendor and sold or delivered for consumption off the premises must be securely sealed by the licensee or its employees with an unbroken seal that prevents the beverage from being immediately consumed before removal from the premises. Such alcoholic beverage also 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 for the alcoholic beverage and meal must be provided by the licensee and attached to the sealed container. If transported in a motor vehicle, an alcoholic beverage that is not in a container sealed by the manufacturer must be placed in a locked compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle.

(2) Any sale or delivery of a malt beverage under this section must comply with the container size, labeling, and filling requirements under s. 563.06, except that such container

may not exceed 32 ounces.

(3) Any delivery of an alcoholic beverage under this section must comply with s. 561.57.

(4) This section may not be construed to authorize public food service establishments licensed under s. 561.20(2)(a)4. to sell as package manufacturer-sealed containers of distilled spirits.

Section 3. Subsection (9) of section 316.1936, Florida Statutes, is amended to read:

316.1936 Possession of open containers of alcoholic beverages in vehicles prohibited; penalties.—

(9) A bottle of wine that has been resealed and is transported pursuant to s. 564.09 or an alcoholic beverage that has been sealed by a licensee or the employee of a licensee and is transported pursuant to s. 561.575 is not an open container under ~~the provisions of~~ this section.

Section 4. This act shall take effect July 1, 2021.

SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

February 17, 2021

Senator Kathleen Passidomo, Chair
Committee on Rules
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 148 be placed on the committee's agenda at your earliest convenience. This bill will codify the Governor's existing executive order authorizing restaurants with an SRX license to sell alcoholic beverages to go, or by delivery, when ordered with a meal. This bill is critical to supporting Florida's restaurant industry. As you know, they have been impacted greatly by restrictions that were enacted as a result of COVID-19 and by changing service demands in light of the pandemic.

Thank you for your consideration of this request. Please let me know if I can provide additional information regarding this bill.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

148
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 230 S. Adams St.
Street

Phone 224-2250

Tallahassee FL 32301
City *State* *Zip*

Email spadgett@frla.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

SB 148
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Beverage Law

Name Jonathan Rees

Job Title Director, State Government Affairs

Address 204 S. Monroe St.
Street

Phone (850) 570-0043

Tallahassee FL 32301
City *State* *Zip*

Email Jonathan.Rees@anheuser-busch.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Anheuser-Busch

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

148
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Beverage Law

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 S Adams Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 8502224082

Email Jake@frf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

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

March 25, 2021
Meeting Date

148
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Alcoholic Beverages

Name Scott Dick

Job Title Lobbyist

Address 210 South Monroe Street
Street

Phone 8504219100

Tallahassee — *City* | Florida — *State* | 32301 — *Zip*

Email scott@skdgrp.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ABC Fine Wine & Spirits AND Florida Independent Spirits 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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/2021
Meeting Date

SB 148
Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Christian Camara

Job Title

Address PO Box 122
Street
Tallahassee, FL 32302
City *State* *Zip*

Phone 305 608 4300

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Institute For Justice

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
23 Mar 21	148

Amendment Barcode (if applicable)

Topic _____

Name Diego Echeverri

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

148
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Beverage Law

Name B.D. Jogerst

Job Title

Address 516 N Adams St
Street

Phone 850-224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bjogerst@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/21
Meeting Date

SB 148
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Beverage Law

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-681-0024

Email jorge@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Uber Technologies

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/SB 170
INTRODUCER:	Health Policy Committee and Senator Hooper and others
SUBJECT:	Podiatric Medicine
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	**Fav/CS**
2.	Brick	Bouck	ED	**Favorable**
3.	Howard	Sadberry	AP	**Favorable**
4.	Rossitto Van-Winkle	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 170 makes changes to three issues related to the practice of podiatric medicine. The bill:

- Creates section 461.0155, Florida Statutes, to specify that podiatrists, when supervising medical assistants, are governed by section. 458.3485, Florida Statutes;
- Requires that a minimum of two continuing education (CE) hours related to the safe and effective prescribing of controlled substances must be added to the CE hours that the Board of Podiatric Medicine (BPM) may require as a condition of podiatrist licensure renewal; and
- Adds podiatrists to the list of health care providers who are authorized to enter into direct health care agreements with patients for the provision of health care services, without such agreements being considered insurance.

The bill has no impact on state revenues or state expenditures.

The bill takes effect on July 1, 2021.

II. Present Situation:

The Department of Health

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

Podiatric Medicine

Podiatric medicine is the diagnosis or medical, surgical, palliative, and mechanical treatment of ailments of the human foot or leg.[4] It also includes the amputation of toes or other parts of the foot, but does not include the amputation of the entire foot or leg. A podiatric physician is authorized to prescribe drugs specifically related to his or her scope of practice.[5]

The Bureau of Podiatric Medicine (BPM) was established to ensure that every podiatric physician practicing in this state meets minimum requirements for safe practice. The BPM licenses, monitors, disciplines, educates, and, when appropriate, rehabilitates practitioners to assure their competence in the service of the people of Florida.

Licensure Requirements

Florida law requires a podiatric physician to meet the following requirements for licensure:[6]

- Be at least 18 years of age;
- Hold a degree from a school or college of podiatric medicine or chiropody recognized and approved by the Council on Podiatry Education of the American Podiatric Medical Association;
- Have successfully completed one of the following clinical experience requirements:
  - One year of residency in a program approved by the BPM;[7] or
  - Ten years of continuous, active licensed practice of podiatric medicine in another state immediately preceding application and completion of at least the same continuing education requirements during those 10 years as are required of podiatric physicians licensed in this state;
- Successfully complete a background screening; and

[1] Section 20.43, F.S.
[2] Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the department or, in some cases, within the MQA.
[3] Section 20.43, F.S.
[4] Section 461.003(5), F.S.
[5] *Id.*
[6] Section 461.006, F.S.
[7] *Id.* If it has been more than four years since the completion of the residency, an applicant must have two years of active, licensed practice of podiatric medicine in another jurisdiction in the four years immediately preceding application or successfully complete a board-approved postgraduate program or board-approved course within the year preceding application.

- Obtain passing scores on the national examinations administered by the National Board of Podiatric Medical Examiners.[8]

A license to practice podiatric medicine must be renewed biennially.

Continuing Education (CE)

A podiatric physician must complete 40 hours of CE as a part of the biennial licensure renewal that must include:[9]

- One hour on risk management;
- One hour on the laws and rules related to podiatric medicine;
- Two hours on the prevention of medical errors;
- Two hours on HIV/AIDS (due for the first renewal only); and
- One hour on human trafficking (beginning January 1, 2021).[10]

Controlled Substance Prescribers

Effective July 1, 2018, every person registered with the U.S. Drug Enforcement Administration and authorized to prescribe controlled substances must complete a two-hour CE course on prescribing controlled substances.[11] The course must include:

- Information on the current standards for prescribing controlled substances, particularly opiates;
- Alternatives to these standards;
- Non-pharmacological therapies;
- Prescribing emergency opioid antagonists; and
- The risks of opioid addiction following all stages of treatment in the management of acute pain.

The course can only be offered by a statewide professional association of physicians in this state that is accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award Category 1 Credit or the American Osteopathic Category 1-A medical continuing education on the safe and effective prescribing of controlled substances each biennial license renewal.[12] Approved providers for the course are available through the BPM's website[13] and CE Broker.[14]

This requirement does not apply to a licensee who is required by his or her applicable practice act to complete a minimum of two hours of continuing education on the safe and effective

[8] Rule 64B18-11.002, F.A.C., (2019).
[9] Section 461.007(3), F.S., and Rule 64B18-17, F.A.C., (2019).
[10] Section 456.0341, F.S.
[11] Section 456.0301, F.S.
[12] *Id.*
[13] Department of Health, *Take Control of Controlled Substances*, *available at* http://www.flhealthsource.gov/FloridaTakeControl/ (last visited Jan. 18, 2021). To access the podiatric list of providers, select Podiatric Medicine.
[14] *See* CE Broker, *Podiatric Physician*, *available at* https://courses.cebroker.com/search/fl/podiatric-physician?subjectArea=3313 (last visited Jan. 19, 2021).

prescribing of controlled substances. The requirement applies to podiatric physicians because their practice act (chapter 461, F.S.) does not specifically do so.

Medical Assistants

Section 458.3485, F.S., defines a "medical assistant" as a professional, multi-skilled person dedicated to assisting in all aspects of medical practice under the direct supervision and responsibility of a physician. A medical assistant:

- Assists with patient care management;
- Executes administrative and clinical procedures; and
- Often performs managerial and supervisory functions.

Competence in the field also requires that a medical assistant adhere to ethical and legal standards of professional practice, recognize and respond to emergencies, and demonstrate professional characteristics.

A medical assistant performs his or her duties under the direct supervision and responsibility of a licensed physician. A medical assistant may undertake the following duties:

- Performing clinical procedures, including:
  - Performing aseptic procedures;
  - Taking vital signs;
  - Preparing patients for the physician's care and treatment;
  - Performing venipunctures and non-intravenous injections; and
  - Observing and reporting patients' signs or symptoms;
- Administering basic first aid;
- Assisting with patient examinations or treatments;
- Operating office medical equipment;
- Collecting routine laboratory specimens as directed by the physician;
- Administering medication as directed by the physician;
- Performing basic laboratory procedures;
- Performing office procedures, including all general administrative duties required by the physician; and
- Performing dialysis procedures, including home dialysis.

A medical assistant is not required to be licensed, certified, or registered to practice in Florida but may obtain the designation of a certified medical assistant if he or she receives a certification from a program accredited by the National Commission for Certifying Agencies, a national or state medical association, or an entity approved by the Board of Medicine.

Current law does not regulate podiatric physicians regarding the supervision of, or the delegation of tasks or procedures to, medical assistants.

Direct Health Care Agreements

Section 624.27, F.S., authorizes the use of a direct health care agreement that is a contract between a health care provider and a patient, a patient's legal representative, or a patient's employer. A direct health care agreement must:

- Be in writing;
- Be signed by the health care provider, or his or her agent, and the patient, the patient's legal representative, or the patient's employer;
- Allow either party to terminate the agreement by giving the other party 30 days' advance written notice;
- Allow immediate termination of the agreement for a violation of physician-patient relationship or a breach of the terms of the agreement;
- Describe the scope of health care services that are covered by the monthly fee;
- Specify the monthly fee and any fees for health care services not covered under the agreement;
- Specify the duration of the agreement and any automatic renewal provisions;
- Offer a refund to the patient of monthly fees paid in advance if the health care provider stops offering health care services for any reason;
- State that the agreement is not health insurance and that the health care provider will not bill the patient's health insurance policy or plan for services covered under the agreement;
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual responsibility provision of the federal Patient Protection and Affordable Care Act; and
- State that the agreement is not workers' compensation insurance and may not replace the employer's workers' compensation obligations.

A direct health care agreement is not considered health insurance and is exempt from the Florida Insurance Code that precludes any authority of the Office of Insurance Regulation to regulate such agreements.[15]

Currently, s. 624.27, F.S., pertains to a direct health care agreement contract with an allopathic physician, an osteopathic physician, a chiropractic physician, a nurse, a dentist, or a health care group practice, for health care services that are within the competency and training of the health care provider. Direct health care agreement contracts with a podiatric physician for the provision of health care services are not contemplated under the statute.

III. Effect of Proposed Changes:

This bill modifies the practice of podiatric medicine regarding the supervision of medical assistants, direct health care agreements, and continuing education.

Medical Assistants

The bill creates s. 461.0155, F.S., within the podiatrist practice act to provide that a podiatric physician's supervision of a medical assistant is governed by s. 458.3485, F.S.

[15] Section 624.27(2), F.S.

Direct Health Care Agreements

The bill amends s. 624.27, F.S., to authorize individuals to directly contract with podiatric physicians through direct health care agreements for the provision of health care services without such contracts being considered insurance. The bill retains the contract requirements under current law for other health care providers offering direct health care agreements and applies them to such contracts with podiatric physicians.

Continuing Education

The bill amends s. 461.007, F.S., to provide that the CE hours that the BPM may require of podiatrists for licensure renewal must include a minimum of two hours of CE related to the safe and effective prescribing of controlled substances. With this change, podiatrists will no longer be required to complete CE under s. 456.0301, F.S.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 461.007 and 624.27.

This bill creates section 461.0155 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 Health Policy on January 27, 2021:
The committee substitute deletes the underlying bill's amendment to s. 458.4585, F.S. That portion of the underlying bill would create a definition for the term "physician" to include podiatric physicians.

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 Health Policy; and Senators Hooper and Gruters

588-01374-21 2021170c1

A bill to be entitled

An act relating to podiatric medicine; amending s. 461.007, F.S.; authorizing the Board of Podiatric Medicine to require a specified number of continuing education hours related to the safe and effective prescribing of controlled substances; creating s. 461.0155, F.S.; providing for governance of podiatric physicians who are supervising medical assistants; amending s. 624.27, F.S.; revising the definition of the term "health care provider" to include podiatric physicians; providing an effective date.

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

Section 1. Subsection (3) of section 461.007, Florida Statutes, is amended to read:

461.007 Renewal of license.—

(3) The board may by rule prescribe continuing education, not to exceed 40 hours biennially, as a condition for renewal of a license, with a minimum of 2 hours of continuing education related to the safe and effective prescribing of controlled substances. The criteria for such programs or courses shall be approved by the board.

Section 2. Section 461.0155, Florida Statutes, is created to read:

461.0155 Medical assistants.—A podiatric physician who is supervising a medical assistant shall be governed by s. 458.3485.

Section 3. Paragraph (b) of subsection (1) of section

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

Florida Senate - 2021 **CS for SB 170**

588-01374-21 2021170c1

624.27, Florida Statutes, is amended to read:

624.27 Direct health care agreements; exemption from code.—

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

(b) "Health care provider" means a health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, or chapter 466, or a health care group practice, who provides health care services to patients.

Section 4. This act shall take effect July 1, 2021.

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

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill # 170**, relating to Podiatric Medicine, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

SB 170 creates section 461.0155, Florida Statutes, to specify that podiatrists, when supervising medical assistants, are governed by section. 458.3485, Florida Statutes, requires that a minimum of two continuing education (CE) hours related to the safe and effective prescribing of controlled substances must be added to the CE hours that the Board of Podiatric Medicine (BPM) may require as a condition of podiatrist licensure renewal, and adds podiatrists to the list of health care providers who are authorized to enter into direct health care agreements with patients for the provision of health care services, without such agreements being considered insurance.

Senator Ed Hooper
Florida Senate, District 16

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

170
Bill Number (if applicable)

Topic Podiatric Medicine

Amendment Barcode (if applicable)

Name Steve Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr
Street

Phone 878-7364

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

3-25-21
Meeting Date

SB 170
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Podiatric Medicine

Name Jason D. Winn

Job Title

Address 2709 Killarney Way #4
Street

Tall FL 32309
City *State* *Zip*

Phone 850/519-5876

Email jwinn@jwinnlaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Podiatric Medical Assoc.

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)

3/25
Meeting Date

170
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Podiatric Medicine

Name Chris Hansen

Job Title Ballard Partners

Address 201 E Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 251-2672

Email Chansen@ballardpartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Podiatric Medical Association (FPMA)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 228
INTRODUCER:	Rules Committee; Judiciary Committee; Commerce and Tourism Committee; and Senator Bradley and others
SUBJECT:	Notaries Public
DATE:	March 25, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Ravelo	Cibula	JU	**Fav/CS**
3.	Harmsen	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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;

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[1] Chapter 2019-71, Laws of Fla. 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*, DLAPiper 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 Mar. 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 Mar. 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 Mar. 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/bill/116th-congress/senate-bill/3533/text?q=%7B%22search%22%3A%5B%223533%22%5D%7D&r=4&s=2 (last visited Mar. 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 Mar. 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 Mar. 25, 2021).

- Have a current contract with a RON service provider whose technologies and credentialing processes satisfy the statutory minimum requirements; and
- 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 Mar. 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

- The notary's credential analysis[15] of the identification to ensure its validity; and
- The notary's identity proofing[16] 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

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.

[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.

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 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 or 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 post 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] FLA. CONST. art V, s. 15,.
[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] FLA. CONST. art V, s. 2(a).
[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/CS by Rules on March 25, 2021:
The CS/CS/CS makes a technical amendment to update an incorrect cross-reference.

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;

[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.

- 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;
- 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.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2021	.	
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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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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 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. 117.245(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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A bill to be entitled

An act relating to notaries public; amending s. 117.021, F.S.; clarifying that a notary public is entitled to select particular technology in performing a notarial act with respect to an electronic record; authorizing a notary public's contract or employer to require the use of a particular technology in performing a notarial act with respect to an electronic record; amending s. 117.05, F.S.; revising limitations on notary public fees; amending s. 117.201, F.S.; revising definitions; amending s. 117.225, F.S.; revising certain registration requirements for online notaries public; creating s. 117.231, F.S.; authorizing notaries public to remotely swear in witnesses using audio-video communication technology; authorizing notaries public to remotely swear in new attorneys admitted to The Florida Bar using audio-video communication technology; amending s. 117.245, F.S.; modifying requirements for entries in the electronic journal maintained by an online notary public; requiring a remote online notarization service provider, rather than an online notary public, to retain audio-video communication recordings of online notarizations; authorizing a RON service provider to delegate this duty to a secure repository under certain conditions; conforming provisions to changes made by the act; amending s. 117.255, F.S.; revising provisions governing access to audio-video communication recordings to conform to changes made by

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the act; authorizing a remote online notarization service provider to charge a fee for access to such recordings, subject to specified limitations; amending s. 117.265, F.S.; clarifying that an online notary public is entitled to select his or her remote online notarization service provider; authorizing a notary public's contract or employer to require the use of a particular remote online notarization service provider in performing online notarizations; requiring an online notary public to notify the Department of State of the effective date of a change in the remote online notarization service provider used; amending s. 117.275, F.S.; clarifying limitations on fees charged for online notarizations; amending s. 117.295, F.S.; requiring the department to publish on its website a list containing certain information on online notaries public; requiring a remote online notarization service provider to file a self-certification with the department; specifying the duration of a self-certification; requiring the department to publish on its website a list containing certain information on self-certified remote online notarization service providers; prohibiting a remote online notarization service provider from using, selling, or offering to sell or transfer personal information obtained in the course of performing online notarizations; providing exceptions; providing an effective date.

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.

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

(b) Confirmation of the identity of the principal and any witness.

(c) A general description or identification of the records to be signed.

(d) At the commencement of the recording, recitation by the online notary public of information sufficient to identify the notarial act.

(e) A declaration by the principal that his or her signature on the record is knowingly and voluntarily made.

(f) All of the actions and spoken words of the principal, notary public, and any required witness during the entire online notarization, including the signing of any records before the online notary public.

(4) The electronic journal required under subsection (1) and the recordings of audio-video communications required under subsection (2) shall be maintained for at least 10 years after the date of the notarial act. However, a full copy of the recording of the audio-video communication required under subsection (2) relating to an online notarization session that involves the signing of an electronic will must be maintained by a qualified custodian in accordance with chapters 731 and 732. The Department of State maintains jurisdiction over the electronic journal and audio-video communication recordings to investigate notarial misconduct for a period of 10 years after the date of the notarial act. The online notary public, a guardian of an incapacitated online notary public, or the personal representative of a deceased online notary public may, by contract with a secure repository in accordance with any rules established under this chapter, delegate to the repository

the online notary public's duty to retain the electronic journal ~~and the required recordings of audio-video communications~~, provided that the Department of State is notified of such delegation of retention duties to the repository within 30 days thereafter, including the effective date of the delegation and the address and contact information for the repository. If an online notary public delegates to a secure repository under this section, the online notary public shall make an entry in his or her electronic journal identifying such repository, and provide notice to the Department of State as required in this subsection. A RON service provider may, by contract with a secure repository in accordance with any rules established under this chapter, delegate to the repository the RON service provider's duty to retain the required recordings of audio-video communications, provided that the Department of State is notified of such delegation of retention duties to the repository within 30 days thereafter, including the effective date of the delegation and the address and contact information for the repository. During any delegation under this subsection, the secure repository shall fulfill the responsibilities of the online notary public or RON service provider to provide copies or access under s. 117.255(2) and (3).

(5) An omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or of the electronic record which was notarized, but may be introduced as evidence to establish violations of this chapter; as evidence of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, or unconscionability; or for other evidentiary purposes. However, if the recording of the

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.

(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;~~

~~(c)~~ 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

notarization; and

(h) With respect to electronic copies of pertinent entries in the electronic journal, the RON service provider used for the online notarizations associated with those entries.

(3)~~(6)~~ The online notary public may charge a fee not to exceed $20 per transaction record for making and delivering electronic copies of a given series of related electronic records, and a RON service provider may charge a fee not to exceed $20 for providing access to, or a copy of, the related audio-video communication records, except such copies or access must be provided without charge if requested by any of the following within the 10-year period specified in s. 117.245(4):

(a) A party to the electronic record;

(b) In a real estate transaction, the title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public with regard to such transaction; ~~or~~

(c) The Department of State pursuant to an investigation relating to the official misconduct of an online notary public;

(d) The qualified custodian of an electronic will notarized by the online notary public;

(e) With respect to audio-video communication recordings of an online notarization, the online notary public performing that notarization; or

(f) With respect to electronic copies of a given series of related electronic records, the RON service provider used for the online notarization of those records.

If the online notary public or RON service provider charges ~~does~~

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

~~charge~~ a fee, the online notary public or RON service provider must ~~shall~~ disclose the amount of such fee to the requester before making the electronic copies or providing access to, or making a copy of, the requested audio-video communication recordings.

Section 8. Subsection (5) of section 117.265, Florida Statutes, is amended to read:

117.265 Online notarization procedures.—

(5)(a) An online notary public shall select the RON service provider to be used to perform an online notarization, and a person may not require the online notary public to use a particular RON service provider; however, if the online notary public is required by his or her contract or employer to perform online notarizations, the contract or employer may require the use of a particular RON service provider for those online notarizations.

(b) An online notary public may change his or her RON service provider or providers from time to time, but shall notify the Department of State of such change, and its effective date, within 30 days thereafter.

Section 9. Section 117.275, Florida Statutes, is amended to read:

117.275 Fees for online notarization.—An online notary public or the employer of such online notary public may charge a fee, not to exceed $25, for performing an online notarial act ~~notarization~~ under this part. Fees for services other than notarial acts, including the services of a RON service provider, are not governed by this section. A RON service provider's 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

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

storage, or other services offered by the RON service provider to online notaries public for the purpose of directly facilitating their performance of online notarizations.

(f) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit of a RON service provider, or the dissolution, insolvency, or cessation of operations of a business or operating unit, if limited to such personal information held by that business or unit and any transferee agrees to comply with the restrictions set forth in this subsection.

Section 11. This act shall take effect January 1, 2022.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 16, 2021

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 228 be placed on the agenda for the Committee on Rules at your earliest convenience. The bill makes several technical revisions to Chapter 117, FS, relating to electronic notarization. The law was enacted in 2019 and, given the demands of COVID-19, legislation is needed to address glitches and clarify some of the statute's provisions. Additionally, the bill codifies a Supreme Court Administrative Order allowing court reporters to remotely swear in witness and newly admitted attorneys via audio-visual technology.

Thank you for your consideration and please let me know if I can provide additional information.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

03/25/2021
Meeting Date

228
Bill Number (if applicable)

Topic Notaries Public

Amendment Barcode (if applicable)

Name Warren Husband

Job Title

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee FL 32302
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Attorneys' Title Fund Services, LLC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25-21
Meeting Date

228
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Remote Online Notary

Name KARI HEBRANK

Job Title

Address 215 S. Monroe St. #500
Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone 566-7824

Email Khebrank@coulterfields.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SOUTHERN TITLE

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/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	**Favorable**

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) (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.

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[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 2021286c1

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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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

from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified under this chapter as a Contractor I or~~,~~ Contractor II~~, or Contractor IV under this chapter~~ may design new fire protection systems of 49 or fewer sprinklers~~;, and~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of ~~not more than~~ 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code, and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. A person certified as a Contractor I, Contractor II, or Contractor IV may 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. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered

professional engineer.

(11) "Fire protection system" means a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. Such systems include, but are not limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems used for fire protection use. Such systems also include any overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, thermal systems used in connection with fire sprinkler systems, ~~and~~ tanks providing water supply or pump fuel, including piping for such tanks, and pumps connected to fire sprinkler systems.

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

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 12, 2021

I respectfully request that **Senate Bill #286**, relating to Fire Sprinklers, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Statement of Intent: SB 286 – Fire Sprinklers

Senate Bill 286 seeks to address three technical changes to FL Statute 633, which deals with Fire Preventions and Controls. The three areas in the bill address changes to the definition of a Contractor V, increasing the sprinkler cap, and clarifying fire protection system installation. These changes were agreed to language with the Fire Protection Engineers and the Department of Financial Services.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/21
Meeting Date

286
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fire Sprinklers

Name Edward Briggs

Job Title Director of Government Relations

Address 235 W. Brandon Blvd. Ste. 640
Street

Brandon FL 33511
City *State* *Zip*

Phone 8509335994

Email edward@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Fire Sprinkler Association - FL Chapter

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

3/25/2021
Meeting Date

SB 286
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fire Sprinklers

Name Timothy J. Meenan

Job Title Lobbyist

Address PO Box 11247
Street

Phone 8504254000

Tallahassee — *City* | FL — *State* | 32302 — *Zip*

Email tim@meenanlawfirm.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Fire Sprinkler Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

This information was not read into the record by the Chair

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 354
INTRODUCER:	Rules Committee; Judiciary Committee, and Senator Harrell
SUBJECT:	Restitution
DATE:	March 26, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Stokes	Jones	CJ	**Favorable**
3.	Bond	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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, provided that the hearsay evidence has a minimal indicia of reliability.

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]

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[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.:

> <u>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.</u>[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, provided that the hearsay evidence has a minimal indicia of reliability.

The bill is effective July 1, 2021.

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[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.

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/CS by Rules on March 25, 2021:
The committee substitute adds the requirement that hearsay evidence used to determine restitution is only admissible if the hearsay evidence has a minimal indicia of reliability.

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.

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

682316

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2021	.	
	.	
	.	
	.	

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

682316

the standards for valuation of a restitution order; authorizing a court to consider hearsay evidence regarding valuation of a restitution award under 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

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

590-02143-21 2021354c1

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.

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

Section 3. This act shall take effect July 1, 2021.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 3, 2021

Chair Kathleen Passidomo, Rules Committee
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Passidomo,

I respectfully request that **SB 354 – Restitution** be placed on the next available Committee Agenda for Rules. SB 354 passed Criminal Justice unanimously.

Regarding the need for SB 354 – Restitution:

- The Florida 4th District Court of Appeals acknowledged the unfairness of the current standard and made the unusual request that the legislature amend s.775.089(9) to specifically give judges some discretion in admitting reliable hearsay evidence to help establish value. Toole v. State, 270 So. 3d 371 (4th DCA 2019)
The Florida 4th District Court of Appeals further suggested that the legislature adopt the exact language contained in this Bill. Phillips v. State, 141 So.3d 702 (4th DCA 2014).
- This Bill only gives the court the ability to consider hearsay evidence, and to only go beyond fair market value when justice and fairness requires other considerations. The court remains as the gatekeeper to protect the rights of the defendant as well as the victim and is not required to consider any evidence not found to be reliable.

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

Respectfully,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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.	Paglialonga	Ryon	CA	**Favorable**
2.	Ponder	McVaney	GO	**Fav/CS**
3.	Paglialonga	Phelps	RC	**Favorable**

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 obligee[18] 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 obligor[19] 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]

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[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

A bill to be entitled

An act relating to payment for construction services; amending s. 218.735, F.S.; increasing the interest rate for certain payments for purchases of construction services; amending s. 255.071, F.S.; 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; amending s. 255.073, F.S.; increasing the interest rate for overdue payments for the purchase of construction services; amending s. 489.129, F.S.; 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; providing construction; amending s. 713.345, F.S.; specifying that a contractor, subcontractor, sub-subcontractor, or other person licensed under ch. 489, F.S., is subject to certain discipline if convicted of misapplication of construction funds; amending s. 713.346, F.S.; specifying that a person, firm, or corporation who fails to make certain payments relating to construction contracts commits a misapplication of constructions funds and is subject to criminal penalties; amending s. 715.12, F.S.; increasing the interest rate for certain payments due under the Construction Contract Prompt Payment Law; conforming a

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

585-02181-21 2021378c1

provision to changes made by the act; reenacting s. 218.76(2)(b), F.S., relating to improper payment requests or invoices, to incorporate the amendment made by this act to s. 218.735, F.S., in a reference thereto; reenacting s. 255.075, F.S., relating to mandatory interest, to incorporate the amendment made by this act to s. 255.073, F.S., in a reference thereto; providing applicability; providing an effective date.

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

Section 1. Subsection (9) of section 218.735, Florida Statutes, is amended to read:

218.735 Timely payment for purchases of construction services.—

(9) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 2 ~~1~~ percent per month, or the rate specified by contract, whichever is greater.

Section 2. Subsection (1) of section 255.071, Florida Statutes, is amended to read:

255.071 Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects.—

(1) Any person, firm, or corporation who receives a payment from the state or any county, city, or political subdivision of the state, or other public authority, for the construction of a public building, for the prosecution and completion of a public

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

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

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.

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

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

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

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

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

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.

SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 3, 2021

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 378 be placed on the agenda of the Committee on Rules at your earliest convenience. The bill enhances the penalties associated with wrongfully withholding payment for construction services for public and private sector construction jobs. The goal is to ensure prompt payment to subcontractors and suppliers through enhanced penalties.

Thank you for your consideration and please let me know if I can be of any assistance.

Sincerely,

Jennifer Bradley

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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/CS/SB 496
INTRODUCER:	Rules Committee; Judiciary Committee; Community Affairs Committee; and Senator Perry
SUBJECT:	Growth Management
DATE:	March 25, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Fav/CS**
2.	Ravelo	Cibula	JU	**Fav/CS**
3.	Paglialonga	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 496 amends various sections of Florida law concerning growth management. The bill makes the following changes to current law:

- Provides that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, must incorporate development orders existing before the plan's effective date. The plan may not impair the completion of a development with such a development order and must vest the density and intensity approved by the development order.
- Requires a local comprehensive plan to have a property rights element, which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during the next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, F.S.
- Specifies that a party, or its successor in interest, may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, as long as the amendment or cancellation does not directly modify the allowable uses or entitlements of such owner's property.
- Requires the Department of Transportation, when selling a parcel of land that was acquired within the last 10 years, to provide a right of first refusal to the prior owner of the land and provides a process for implementing this right of first refusal.

- Allows agreements pertaining to existing developments of regional impact that are classified as essentially built out, and were valid on or before April 6, 2018, to be amended, including amendments exchanging land uses under certain circumstances.

The bill provides a declaration that the act fulfills an important state interest.

The effective date of this bill is July 1, 2021.

II. Present Situation:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by the corresponding Effect of Proposed Changes. The below discussion tracks the order of sections contained in the bill.

III. Effect of Proposed Changes:

Comprehensive Plans and Preexisting Development Orders (Section 1)

Present Situation

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.[1] The Community Planning Act governs how local governments create and adopt their local comprehensive plans. A comprehensive plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.[2]

Local comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the comprehensive plan's effective date.[3] The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[4] and intensity[5] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[6]

Effect of Proposed Changes

The bill amends s. 163.3167, F.S., to provide that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, and all land development regulations adopted to implement the plan, must incorporate development orders existing before

[1] *See* ch. 2011-139, s. 4, Laws of Fla.
[2] *Payne v. City of Miami*, 52 So. 3d 707, 737 (Fla. 3rd DCA 2010)
[3] *See* ch. 2019-165, s. 3, Laws of Fla.
[4] Section 163.3164(12), F.S., defines the term "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.
[5] Section 163.3164(22), F.S., defines the term "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.
[6] Sections 163.3167(3) and 163.3203, F.S.

the plan's effective date, may not impair the completion of a development with such a development order, and must vest the density and intensity approved by such a development order.

Private Property Rights and the Community Planning Act (Section 2)

Present Situation

Constitutional Private Property Rights

Under article I, section 2 of the Florida Constitution's Declaration of Rights, individuals are guaranteed the right "*to acquire, possess, and protect property*."[7] Although these property rights are enshrined in the Florida Constitution, the state and local governments may curtail these rights through sovereign police powers. State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers "not delegated to the United States."[8] Under this provision, states have police powers to establish and enforce laws protecting the welfare, safety, and health of the public.[9] Regarding private property rights, courts have continuously held that "even constitutionally protected property rights are not absolute, and 'are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are necessary to secure the health, safety, good order, [and] general welfare.'"[10]

When a state or political subdivision exercises police powers to affect property rights, citizens are provided two constitutional challenges to oppose the governmental act. The first challenge is that the government may have acted arbitrarily in violation of due process.[11] In the *City of Coral Gables v. Wood*, the court ruled that "[a] zoning ordinance will be upheld unless it is clearly shown that it has no foundation in reason and is a mere arbitrary exercise of power without reference to public health, morals, safety or welfare."[12] In the first constitutional challenge, government action is simply invalid under the Constitution's due process clause.[13]

The second challenge is whether the government so intrusively regulated the use of property in pursuit of legitimate police power objectives to take the property without compensation in violation of the just compensation clause (takings clause).[14] When reasoning whether a regulation or land use plan constitutes a taking of a landowner's property, the operative inquiry is whether the landowner has been deprived of all or substantially all economic, beneficial or

[7] FLA. CONST. art. I, s. 2.
[8] U.S. CONST. amend. X.
[9] "The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power." *See NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).
[10] *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64, 68 (Fla. 1990) (quoting *Golden v. McCarthy*, 337 So.2d 388, 390 (Fla. 1976)).
[11] *See* U.S. CONST. amend. V, XIV, s. 1; FLA. CONST. art. I s. 9; *see also Fox v. Town of Bay Harbor Islands*, 450 So.2d 559, 560 (Fla. 3rd DCA 1984).
[12] *City of Coral Gables v. Wood*, 305 So.2d 261, 263 (Fla. 3rd DCA 1974).
[13] *See Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).
[14] *See* FLA. CONST. art X, s. 6.

productive use of the property.[15] In the second constitutional challenge, the government action is invalid absent compensation. So the government may either abandon its regulation or validate its action by payment of appropriate compensation to the landowner.[16]

Since these constitutional protections were enacted, the scale of government and land use regulation has considerably expanded. Still, courts have been reluctant to afford relief to property owners under these constitutional challenges.[17] Thus, property owners who experienced property devaluation or economic loss caused by government regulation were seldom compensated.[18]

In 1995, the Legislature addressed the ineffectiveness of these constitutional challenges to government regulation by enacting ch. 70, F.S., which is known as the "Bert J. Harris, Jr., Private Property Rights Protection Act" (hereinafter the "Harris Act").[19]

The Bert J. Harris, Jr., Private Property Rights Protection Act

The Harris Act[20] entitles private property owners to relief when a governmental entity's specific action inordinately burdens the owner's existing use of the real property or a vested right to a specific use of the real property.[21] The Harris Act recognizes that the excessive burden, restriction, or limitation on private property rights as applied may fall short of a taking or due process violation under the State Constitution or the U.S. Constitution.[22] The law does not apply to the U.S. government, federal agencies, or state or local government entities exercising delegated U.S. or federal agency powers.[23]

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity's development order or enforcement action is unreasonable or unfairly burdens the use of the owner's real property,[24] or when a government entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[25] A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.[26]

The Community Planning Act

The Harris Act is balanced against the state's sovereign rights. The state needs to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth

[15] *See Taylor v. Village of North Pam Beach*, 659 So.2d 1167 (Fla. 4th DCA 1995).
[16] *See Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).
[17] *See* Cooper, Weaver, and 'Connor, The Florida Bar, Florida Real Property Litigation, *Statutory Private Property Rights Protection*, s.13.1 (2018).
[18] *Id.*
[19] *Id.*
[20] Section 70.001(1), F.S.
[21] Section 70.001(2), F.S.
[22] Section 70.001(1), F.S.
[23] Section 70.001(3)(c), F.S.
[24] Section 70.51(3), F.S.
[25] Section 70.45(2), F.S.
[26] Section 70.45(1)(c), F.S.

and development.[27] Statutes govern how the state and local governments direct land development[28] with the State Comprehensive Plan and local comprehensive plans adopted by counties and municipalities as required by statute.[29]

The Legislature expressly intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.[30] The authority provided by the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and leave property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.[31]

The State Comprehensive Plan must provide long-range policy guidance for the state's orderly social, economic, and physical growth.[32] The State Comprehensive Plan's goals and policies must be consistent with the protection of private property rights.[33] The State Comprehensive Plan must be reviewed every 2 years by the Legislature, and legislative action is required to implement its policies unless specifically authorized otherwise in the Constitution or law.[34]

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development that reflects community commitments to implement the plan and its elements.[35] Plans are also required to identify procedures for monitoring, evaluating, and appraising the plan's implementation.[36] Plans may include optional elements[37] but must include the following nine elements:

- Capital improvements;[38]
- Future land use plan;[39]
- Intergovernmental coordination;[40]
- Conservation;[41]
- Transportation;[42]

[27] *See* s. 186.002(1)(b), F.S.
[28] *See* ch. 186, 187, and 163, part II, F.S.
[29] Section 163.3167(1)(b), F.S.
[30] *See* s. 163.3161(10), F.S.; *see also* s. 187.101(3), F.S.
[31] *Id*.
[32] Section 187.101(1), F.S.
[33] Section 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.
[34] Section 187.101(1), F.S.
[35] Section 163.3177(1), F.S.
[36] Section 163.3177(1)(d), F.S.
[37] Section 163.3177(1)(a), F.S.
[38] Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.
[39] Section 163.3177(6)(a), F.S.
[40] Section 163.3177(6)(h), F.S.
[41] Section 163.3177(6)(d), F.S.
[42] Section 163.3177(6)(b), F.S.

- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;[43]
- Recreation and open space;[44]
- Housing;[45] and
- Coastal management (for coastal local governments).[46]

All local government land development regulations must be consistent with the local comprehensive plan.[47] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[48] However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.[49]

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every 7 years to reflect any changes in state requirements.[50] Within 1 year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[51] A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[52]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[53] Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process to adopt comprehensive plans.[54] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[55] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[56]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[57] about the proposed amendment before sending it in for comment from several reviewing agencies,[58] including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of Transportation.[59] Local governments or government agencies within the state filing a written request with the governing

[43] Section 163.3177(6)(c), F.S.
[44] Section 163.3177(6)(e), F.S.
[45] Section 163.3177(6)(f), F.S.
[46] Section 163.3177(6)(g), F.S.
[47] Section 163.3194(1)(b), F.S.
[48] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[49] Section 189.081(1)(b), F.S.
[50] Section 163.3191(1), F.S.
[51] Section 163.3191(2), F.S.
[52] Section 163.3161(12), F.S.
[53] Section 163.3184(3)(a), F.S.
[54] Section 163.3184(2)(c), F.S.
[55] Section 163.3184(4)(a), F.S.
[56] Section 163.3164(44), F.S.
[57] Sections 163.3184(4)(b) and (11)(b)1., F.S.
[58] *See* s. 163.3184(1)(c), F.S., for a complete list of all reviewing agencies.
[59] Section 163.3184(4)(b) and (c), F.S.

body are also entitled to copies of the amendment.[60] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[61]

DEO must provide a written report within 60 days after receipt of the proposed amendment if it elects to review the amendment.[62] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[63] Within 180 days after receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.[64] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the second public hearing.[65]

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law[66] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[67] A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.[68] Unless the local comprehensive plan amendment is challenged, it may go into effect pursuant to the notice of intent.[69] If there is a timely challenge, then the plan amendment will not take effect until DEO or the Administration Commission[70] enters a final order determining whether the adopted amendment complies with the law.[71]

Effect of Proposed Changes

The bill amends s. 163.3177(6), F.S., to require local governments to incorporate a private property rights element into their comprehensive plans and respect private property rights in local decision making.

The bill provides a model statement of property rights, and local governments may incorporate the suggested language directly into their comprehensive plan. The property rights provided in

[60] Section 163.3184(4)(b), F.S.
[61] Section 163.3184(4)(c), F.S.
[62] Section 163.3184(4)(d)1., F.S.
[63] Section 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. *See* s. 163.3184(4)(d)2., F.S.
[64] Sections 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. *See* s. 163.3184(4)(e)1., F.S.
[65] Section 163.3184(4)(e)2., F.S.
[66] Section 163.3184(4)(e)3. and 4., F.S.
[67] Section 163.3184(4)(e)4., F.S.
[68] *Id*.
[69] Section 163.3184(4)(e)5., F.S.
[70] Section 14.202, F.S., provides that the Administration Commission is composed of the Governor and the Cabinet (Section 20.03, F.S., provides that "Cabinet" means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture).
[71] *Id*.

the bill include the following five acknowledgments that a local government should consider in the decision-making process:

- The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights;
- The right of the property owner to the quiet enjoyment of the property, to the exclusion of all others;
- The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances;
- The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property; and
- The right of the property owner to dispose of his or her property through sale or gift.

Each local government must adopt its own property rights element in its comprehensive plan by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, F.S. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in the bill.

Local Government Development Agreements (Section 3)

Present Situation

Local governments may enter into development agreements with developers.[72] A "development agreement" is a "contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[73]

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[74] A development agreement must include the following:[75]

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;
- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who will provide such facilities, the date that any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;

[72] Section 163.3220(4), F.S.; *see also* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[73] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[74] Section 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[75] Section 163.3227(1), F.S.

- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

A development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.[76] Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the circuit court clerk in the county where the local government is located. A development agreement will not be effective until properly recorded in the public records of the county.[77]

The requirements and benefits in a development agreement are binding and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,[78] also known as a successor in interest.[79] A development agreement may be amended or canceled by the parties' mutual consent to the agreement or by their successors in interest.[80]

Effect of Proposed Changes

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property that were originally subject to the development agreement unless the amendment, modification, or termination directly modifies the allowable uses or entitlements of an owner's property.

Department of Transportation Disposal of Real Property (Section 4)

Present Situation

The Florida Department of Transportation ("DOT") is authorized to convey any land, building, or other real or personal property it acquired if it determines the property is not needed for a transportation facility.[81] In such cases, DOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means it deems to be in its best interest and must advertise the disposal of any property valued over $10,000.[82]

[76] Section 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[77] Section 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[78] Section 163.3239, F.S.
[79] A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. BLACK'S LAW DICTIONARY 1473 (8th ed. 2004).
[80] Section 163.3237, F.S.
[81] Section 337.25(4), F.S.
[82] *Id.*

DOT may not sell an unneeded property for a price less than DOT's current estimate of value, unless:

- The property was donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, then a governmental entity in whose jurisdiction the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.[83]
- The property is to be used for a public purpose, then the property may be conveyed without consideration to a governmental entity.[84]
- The property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, then DOT may negotiate to sell such property as replacement housing.[85]
- DOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes DOT to significant liability risks, then DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.[86]

If, in DOT's discretion, a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.[87] Further, in cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, DOT may first offer the property ("right of first refusal") to the local government or other political subdivision in whose jurisdiction the property is situated.[88]

Effect of Proposed Changes

Notwithstanding any provision of s. 337.25, F.S., to the contrary, the bill requires DOT to afford a right of first refusal to the previous property owner from whom DOT originally acquired the property for DOT's current estimate of value if the property is to be used for a public purpose, requires significant costs to be incurred, or exposes DOT to significant liability risks, or if DOT determines that a sale to any person other than an abutting property owner would be inequitable. Such an offer must be made in writing, by certified mail or hand delivery, and is effective upon receipt by the previous property owner. DOT must provide the previous property owner with at least 30 days to exercise the right of first refusal. If the previous property owner wants to purchase the property, he or she must send notice to DOT by certified mail or hand delivery, and such acceptance is effective upon dispatch. Once the right is exercised, the previous property owner has at least 90 days to close on the property.

The right of first refusal is limited to property acquired within 10 years before the date of disposition by the department.

[83] Section 337.25(4), F.S.
[84] Section 337.25(4)(b), F.S.
[85] Section 337.25(4)(c), F.S.
[86] Section 337.25(4)(d), F.S.
[87] Section 337.25(4)(e), F.S.
[88] Section 337.25(4), F.S.

Developments of Regional Impact (Section 5)

Present Situation

A Development of Regional Impact (DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[89]

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[90] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[91]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[92] until the repeal of the requirements for state and regional reviews in 2018.[93] Local governments where a DRI is located are responsible for implementing and amending existing DRI agreements and development orders.[94]

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date, the date to which the local government had agreed not to impose downzoning, unit density reduction, or intensity reduction, unless:[95]

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or
- The change is clearly established by the local government to be essential to the public health, safety, or welfare.

The local government must review any proposed change to a previously approved DRI based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[96] The local government must review a proposed change reducing the originally approved height, density, or intensity of the development based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change

[89] Section 380.06(1), F.S.
[90] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).
[91] Chapter 72-317, s. 6, Laws of Fla.
[92] *See* ch. 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).
[93] Chapter 2018-158, Laws of Fla.
[94] Sections 380.06(4)(a) and (7), F.S.
[95] Section 380.06(4)(a), F.S.
[96] Section 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.

would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.[97]

DRI agreements classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses were eliminated.[98]

For such agreements, a DRI is essentially built out if:[99]

- All the mitigation requirements in the development order were satisfied, all developers complied with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or
- The project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of Proposed Changes

The bill authorizes the amendment of any DRI agreement previously classified as (or officially determined to be) essentially built out, and entered into on or before April 6, 2018, including amendments authorizing the developer to exchange approved land uses. Subject to the developer demonstrating that the exchange will not increase impacts to public facilities, amendments are made pursuant to the local government's processes for amending development orders.

Important State Interest (Section 6)

The bill states that the Legislature finds and declares that this act fulfills an important state interest.

Effective Date (Section 7)

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution states in part that no county or municipality shall be bound by a general law requiring the county or municipality to spend funds or take an action that requires the expenditure of funds. The bill may implicate this constitutional restriction by potentially causing counties and municipalities to incur some costs amending their comprehensive plans to add a private property rights element by July 1, 2023.

[97] Section 380.06(7)(a), F.S.
[98] Chapter 2018-158, s. 1, Laws of Fla.
[99] Sections 380.06(15)(g)3. and 4., F.S. (2017).

Notwithstanding, article VII, section 18(d), of the Florida Constitution provides eight exemptions to the mandate restrictions. The mandate exemption relevant to this bill is the exemption for "laws having insignificant fiscal impact[.]"[100] For the Fiscal Year 2021-2022 the Senate's forecast for laws having a state-wide insignificant fiscal impact is $2,189,391.90.[101] Thus, if Florida's 67 counties and 411 municipalities spend on average $4,580.31 or less on the comprehensive plan amendment, the bill would be deemed to have an insignificant fiscal impact.

Complying with the bill may not necessitate a local government to expend additional funds beyond those already allocated to general government activities. Thus, the fiscal impact may be insignificant.

Still, if the judiciary determines that the bill is a mandate and no exemption or exception applies, the bill must have been approved by two-thirds of the membership of each house of the Legislature to be binding on local governments. The bill has the necessary determination that it fulfills an important state interest to be passed in this manner.

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.

[100] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Feb. 24, 2021)

[101] Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is *available at* http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited Feb. 24, 2021).

C. Government Sector Impact:

Section 2 of CS/CS/CS/SB 496 may have a negative fiscal impact on local governments by requiring each county and municipality to adopt a private property rights element into its comprehensive plan by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan. However, the minimum costs associated with amending a comprehensive plan may be absorbed by a local government's budgetary allocations for general government activities. Thus, the fiscal impact may be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 163.3177, 163.3237, 337.25, and 380.06.

IX. Additional Information:

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

CS/CS/CS by Rules on Mar 25, 2021:
The committee substitute requires the Department of Transportation, when selling a parcel of land, to provide a right of first refusal to the prior owner of the land and provides a process for implementing this right of first refusal. The committee substitute limits the right of first refusal to property acquired within 10 years before the date of disposition by the department.

CS/CS by Judiciary on Mar 15, 2021:
The committee substitute removes the provision which required the Department of Transportation to afford the right of first refusal to the previous property owner when selling a parcel of land.

CS by Community Affairs on March 3, 2021:
The committee substitute:

- Provides that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, instead of January 1, 2019, must incorporate development orders existing before the comprehensive plan's effective date, may not impair the completion of a development an existing development order, and must vest the density and intensity approved by such development order.

- Revises the timeframe within which a local government must adopt a property rights element in its comprehensive plan. Instead of the July 1, 2023, deadline, the bill now requires local governments to adopt a property rights element by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2021	.	
	.	
	.	
	.	

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Between lines 102 and 103
insert:

Section 4. Subsection (4) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(4) The department may convey, in the name of the state, any land, building, or other property, real or personal, which was acquired under subsection (1) and which the department has


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determined is not needed for the construction, operation, and maintenance of a transportation facility. When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than $10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). Notwithstanding any provision of this section to the contrary, before any conveyance under this subsection is made, except a conveyance under paragraph (a) or paragraph (c), the department shall first afford a right of first refusal to the previous property owner for the department's current estimate of value of the property. The right of first refusal must be in writing and sent to the previous owner via certified mail or hand delivery, which is effective upon receipt. The right of first refusal must provide the previous owner with a minimum of 30 days to exercise the right in writing and must be sent to the originator of the offer by certified mail or hand delivery, which is effective upon dispatch. If the previous owner exercises his or her right of first refusal, the previous owner has a minimum of 90 days to close on the property. The right of first refusal set forth in this subsection may not be required for the disposal of property acquired more than 10 years before the date of disposition by the department.


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(a) If the property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor’s heirs, successors, assigns, or representatives.

(b) If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.

(c) If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive at least its investment in such property or the department’s current estimate of value, whichever is lower. It is expressly intended that this benefit be extended only to persons actually displaced by the project. Dispositions to any other person must be for at least the department’s current estimate of value.

(d) If the department determines that the property requires significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 10 years to offset the property’s value in establishing a value for disposal of the property, even if that value is zero.

(e) If, at the discretion of the department, a sale to a

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person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the department's current estimate of value.

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

And the title is amended as follows:

Between lines 20 and 21

insert:

337.25, F.S.; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances; providing requirements and procedures relating to the right of first refusal; amending s.

By the Committees on Judiciary; and Community Affairs; and
Senator Perry

590-02867-21 2021496c2

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; amending s. 163.3177, F.S.; requiring local governments to include a property rights element in their comprehensive plans; providing a statement of rights which a local government may use; requiring a local government to adopt a property rights element by the earlier of its adoption of its next proposed plan amendment initiated after a certain date or the next scheduled evaluation and appraisal of its comprehensive plan; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; amending s. 163.3237, F.S.; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; providing an exception; amending s. 380.06, F.S.; authorizing certain developments of regional impact agreements to be amended under certain circumstances; providing retroactive applicability; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (3) of section 163.3167, Florida

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

590-02867-21 2021496c2

Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of this act shall, within 1 year after incorporation, establish a local planning agency, pursuant to s. 163.3174, and prepare and adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan in accordance with this act. A comprehensive plan for a newly incorporated municipality which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in

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

its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of its adoption of its next proposed plan amendment that is initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191. If a local

government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. A party or its designated successor in interest to a development agreement and a local government may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or cancellation directly modifies the allowable uses or entitlements of such owners' property.

Section 4. Paragraph (d) of subsection (4) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before April 6, 2018, and may be amended pursuant to the processes adopted by the local government for amending development orders. Any such agreement or amendment may authorize the developer to exchange approved land uses, subject to demonstrating that the exchange

will not increase impacts to public facilities. This paragraph applies to all such agreements and amendments effective on or after April 6, 2018.

Section 5. The Legislature finds and declares that this act fulfills an important state interest.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill #496**, relating to Growth Management, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Statement of Intent:
Senate Bill 496 requires that property rights, which are a fundamental right of every Florida resident as recognized in both the Federal and Florida constitutions, be recognized and planned for in the development of each local government comprehensive plan. Florida law already requires such, but this bill would make the property rights element centrally included in the policies of the comprehensive plan. Doing so does not interfere with existing rights or cause inconsistencies with existing comprehensive plan policies. The bill also makes numerous clarifications to existing growth management law, some of which are to address local government concerns and others to simply add clarity to recent legislative amendments to the growth management statutes which clarifies but makes no substantive change to current law.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

SB 496
Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name Jane West

Job Title Policy & Planning Director

Address 24 Cathedral Pl.
Street

Phone 904-671-4008

St Augustine FL 32084
City *State* *Zip*

Email jwest@1000fof.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing 1000 Friends of Floride

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25-21
Meeting Date

496
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Growth Mgmt

Name Jessica Lewis

Job Title Lobbyists

Address _____ Phone 910-617-2311
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Sierra Club

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Mar 27
Meeting Date

496
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Diego Echeverri

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

496
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St
Street

Phone 222 7500

Tallahassee FL 32301
City *State* *Zip*

Email garyh@hgslaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Association of Florida Community Developers

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.

This information was not read into the record by the Chair

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 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	**Favorable**

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 2020[2] 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 Act[3] and ch. 605, F.S., the Florida Revised Limited Liability Corporate Act (FRLLCA). 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]

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[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. Section607.1301(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-statues/ (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

577-02132-21 2021602c1

A bill to be entitled

An act relating to business organizations; amending s. 605.0410, F.S.; revising requirements relating to inspecting certain records of limited liability companies; amending s. 607.1301, F.S.; revising the definition of the term "accrued interest"; amending s. 607.1302, F.S.; revising the circumstances under which shareholders are entitled to appraisal rights and certain payments; revising limitations relating to such rights and payments; revising applicability; amending s. 607.1303, F.S.; revising the circumstances in which certain shareholders may assert specified appraisal rights; amending s. 607.1321, F.S.; revising requirements for shareholders who wish to assert appraisal rights relating to specified corporate actions; amending s. 607.1322, F.S.; making a technical change; amending s. 607.1326, F.S.; entitling corporations to prepay a shareholder if the shareholder makes a demand for payment; specifying when interest is applicable to such prepayments; making technical changes; amending s. 607.1330, F.S.; revising requirements for proceedings relating to unsettled demands for payment; revising the eligibility requirements for shareholders entitled to the fair value of shares during court proceedings; making technical and conforming changes; amending s. 607.1405, F.S.; revising the requirements for eligible entities to use the name of a dissolved corporation; amending s. 617.0725, F.S.; providing applicability;

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577-02132-21 2021602c1

amending ss. 617.0825 and 617.1703, F.S.; revising applicability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 605.0410, Florida Statutes, is amended to read:

605.0410 Records to be kept; rights of member, manager, and person dissociated to information.—

(3) In a manager-managed limited liability company, the following rules apply:

(b) During regular business hours and at a reasonable location specified by the company, a member may inspect and copy:

1. The records described in subsection (1); and

2. Full information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:

a. The member seeks the information for a purpose reasonably related to the member's interest as a member; and ~~or~~

b. The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information, and if the information sought is directly connected to the member's purpose.

Section 2. Subsection (1) of section 607.1301, Florida Statutes, is amended to read:

607.1301 Appraisal rights; definitions.—The following definitions apply to ss. 607.1301-607.1340:

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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

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;

(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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(j) ~~(k)~~ An amendment of the articles of incorporation of a benefit corporation to which s. 607.604 or s. 607.605 applies;

(k) ~~(l)~~ A merger, domestication, conversion, or share exchange of a social purpose corporation to which s. 607.504 applies; or

(l) ~~(m)~~ A merger, domestication, conversion, or share exchange of a benefit corporation to which s. 607.604 applies.

(2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs (1)(a), (b), (c), (d), ~~and~~ (e), (f), and (h) shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

1. A covered security under s. 18(b)(1)(A) or (B) of the Securities Act of 1933;

2. Not a covered security, but traded in an organized market (or subject to a comparable trading process) and has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least $20 million, exclusive of the value of outstanding shares held by the corporation's subsidiaries, by the corporation's senior executives, by the corporation's directors, and by the corporation's beneficial shareholders and voting trust beneficial owners owning more than 10 percent of the outstanding shares; or

3. Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and which may be redeemed at the option of the holder at net asset value.

(b) The applicability of paragraph (a) shall be determined as of:

1. The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights, the record date fixed to determine the shareholders entitled to sign a written consent approving the corporate action requiring appraisal rights, or, in the case of an offer made pursuant to s. 607.11035, the date of such offer; or

2. If there will be no meeting of shareholders, no written consent approving the corporate action, and no offer ~~is~~ made pursuant to s. 607.11035, the close of business on the day before the consummation of the corporate action or the effective date of the amendment of the articles, as applicable.

(c) Paragraph (a) is not applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(d) For the purposes of subparagraph (a)2., a comparable trading process exists if:

1. The market price of the corporation's shares 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 comparable publicly traded companies; and

2. The corporation repurchases the shares at the price set by its board of directors based upon the independent valuation and subject to certain terms and conditions established by the

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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(c) ~~(b)~~ Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed corporate action.

(2) If a proposed corporate action requiring appraisal rights under s. 607.1302 is to be approved by written consent, 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 established for determining who is entitled to sign a written consent;

(b) Must assert such appraisal rights for all shares of such class or series beneficially owned by the shareholder as of the record date for determining who is entitled to sign the written consent; and

(c) Must not sign a consent in favor of the proposed corporate action with respect to that class or series of shares.

(3) If a proposed corporate action specified in s. 607.1302(1) does not require shareholder approval pursuant to s. 607.11035, 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 date the offer to purchase is made pursuant to s. 607.11035;

(b) Must deliver to the corporation before the shares are purchased pursuant to the offer a written notice of the shareholder's intent to demand payment if the proposed corporate action is effected for all shares of such class or series beneficially owned by the shareholder as of the date the offer to purchase is made pursuant to s. 607.11035; and

(c) ~~(b)~~ Must not tender, or cause or permit to be tendered, any shares of such class or series in response to such offer.

Section 6. Paragraph (a) of subsection (2) of section 607.1322, Florida Statutes, is amended to read:

607.1322 Appraisal notice and form.—

(2) The appraisal notice must be delivered no earlier than the date the corporate action became effective, and no later than 10 days after such date, and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.

2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.

3. That the shareholder did not vote for or consent to the transaction.

4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.

5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus accrued interest, if and to the extent applicable.

Section 7. Section 607.1326, Florida Statutes, is amended to read:

607.1326 Procedure if shareholder is dissatisfied with offer.—

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s.

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

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

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

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.

(b) If subparagraph (a)1. or subparagraph (a)2. applies ~~regarding mobile home owners' associations~~, the applicable provisions of such other respective chapters shall apply.

(2) The provisions of ss. 617.0605-617.0608 do not apply to corporations regulated by any of the foregoing chapters or to any other corporation where membership in the corporation is required pursuant to a document recorded in the county property records.

Section 13. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 2, 2021

I respectfully request that **Senate Bill #602**, relating to Business Organizations, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/21 9:00AM
Meeting Date

SB 602
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title Attorney & Senior Policy Advisor

Address 119 S. Monroe Street
Street

Phone 850-205-9000

TLH FL 32301
City *State* *Zip*

Email ADL@MHDFirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Business Laws Section of The Florida Bar

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

3/25/2021
Meeting Date

602
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Business Organizations

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 S Adams Street
Street

Phone 8502224082

Tallahassee FL 32301
City *State* *Zip*

Email Jake@frf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

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/SB 622
INTRODUCER:	Judiciary Committee and Senator Perry
SUBJECT:	Liens and Bonds
DATE:	March 23, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Fav/CS**
2.	Ponder	McVaney	GO	**Favorable**
3.	Cibula	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 622 revises several provisions of the Construction Lien Law, which is codified in part I of chapter 713, F.S. The most significant of these changes are summarized below.

The Construction Lien Law provides several statutory forms for use by parties to a construction contract to waive or release their rights to record a lien or make a claim against a payment bond in exchange for payment for their work. The bill provides that provisions included in a waiver or release that are not related to the provisions of the statutory forms are unenforceable.

If a person or subcontractor is not paid for work on a construction project, the construction lien laws allow the person to record a lien against the improved property. If multiple contracts are involved, then multiple liens must be recorded. The bill under these circumstances allows a person or subcontractor to record a single consolidated lien for amounts owed under multiple contracts for the same construction project.

A notice of commencement form is a form prescribed by the construction lien laws. The form identifies those responsible for a construction project. The bill revises the form to identify more clearly the owner or lessee who is responsible for a construction project.

The bill also revises procedures relating to notices of termination, another statutory form used in connection with the Construction Lien Law. The changes will provide more time for a person to serve a notice to owner or a notice to contractor to preserve rights to record a lien or pursue a

claim against a payment bond. Currently, a person who begins work on a construction project in the 15 days before a notice of termination is recorded may have the time reduced for serving the documents without notice.

No fiscal impact is expected on state and local governments.

The bill takes effect July 1, 2021.

II. Present Situation:

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Contractors and subcontractors, sub-subcontractors, laborers, and materialmen have an interest in receiving payment for their work. Those individuals have a lien or prospective lien on the property improved and are known as lienors. Mechanisms that address these interests of property owners and lienors are set forth in the Construction Lien Law, codified in part I of chapter 713, F.S., for private construction contracts, s. 255.05, F.S., for public construction contracts, and s. 337.18, F.S., for construction or maintenance contracts with the Department of Transportation.

These mechanisms ensure payment and are especially important where many lienors who are not in privity with the owner perform work on a construction project. A lienor not in privity with the owner has a contract with the contractor or a subcontractor, but no direct contractual relationship with the owner. As a result, a lienor's identity, work, and charges for services might be unknown to the owner or contractor unless the lienor complies with the notice requirements of the construction lien laws. Additionally, compliance with the notice requirements by the various deadlines is a prerequisite to enforcing a lien or pursuing a claim against a payment bond.

A property owner who contracts for the construction of an improvement must carefully follow the requirements of the Construction Lien Law or the owner may become liable for a contractor's failure to pay subcontractors and others.

Building Permit Warning to Owner

When a property owner obtains a building permit for an improvement, the permit includes a large, capitalized, boldface warning about the Construction Lien Law and how a person's failure to comply with the law may result in the person paying twice for the same improvement. The warning states:

> WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN

> FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT[1]

A person may pay twice for an improvement if a payment is an "improper payment." The distinction between a proper and an improper payment may be described as follows:

> If an owner fulfills all the duties the [Construction] Lien Law places upon him, his liability for all mechanics' lien claims cannot exceed the contract price. However, if the owner makes improper payments, then he has failed to comply with the [Construction] Lien Law, and his liability for mechanics' lien claims may exceed the contract price.[2]

Notice of Commencement

Construction work generally begins once a "notice of commencement" is posted on the job site and recorded in the court clerk's office.[3] This notice identifies who owns the property to be improved or who is responsible for the construction project. Accordingly, the notice of commencement will list the name and address of the owner of the property, the fee simple titleholder if different from the owner, the contractor, any lessees, the lender, and the surety.[4] Lienors use the contact information in the notice of commencement to keep the property owner or lessee informed of their identity, work on the construction project, and need to be paid.

A notice of commencement generally has a duration of 1 year after it is recorded.[5] Any construction liens recorded while the notice of commencement is in effect generally attach and take effect on the date that notice of commencement is recorded.[6] Additionally, a payment made by the owner after the notice of commencement expires is considered an improper payment.[7,8]

Notice to Owner/Notice to Contractor

After a notice of commencement is posted and recorded, lienors must serve the property owner and the contractor with a notice to owner or notice to contractor.[9] Serving these documents within the statutory timeframes is a prerequisite to enforcing a lien on the improved property or a claim against a payment bond.[10]

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[1] Section 713.135(1)(a), F.S.
[2] *Tamarac Village, Inc., v. Bates & Daly Co.*, 348 So. 2d 23, 24 (Fla. 4th DCA 1977) (citations omitted).
[3] Section 713.13(1)(a), F.S.
[4] Section 713.13(1)(a) and (d), F.S.
[5] Section 713.13(1)(c), F.S.
[6] Section 713.07(2), F.S.
[7] Section 713.13(1)(c), F.S.
[8] In *Tamarac Village, Inc., v. Bates & Daly Co.*, 348 So. 2d 23, 24 (Fla. 4th DCA 1977), the appellate court held that a payment made by the property owner to a contractor is an improper payment if the payment is made before the notice of commencement is recorded. The decision was based on s. 713.06(3)(a), F.S. (1973), which stated, "The owner shall not pay any money on account of a direct contract prior to recording of the notice provided in §713.13, and any amount so paid shall be held improperly paid." For reasons unknown, the provision has since been repealed.
[9] Sections 255.05(2)(a)2., 337.18(1)(c), 713.06(2), and 713.23(1)(c), F.S.
[10] *Id.*

A notice to owner informs the owner of a lienor's identity and work performed.[11] Upon receipt of the notice, the owner becomes responsible for ensuring that the lienor is paid for its work even if the contractor is paid in full. To protect against a lien by the lienor or having to pay twice for the same work, the notice warns:

> TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.[12]

A notice to contractor is similar to a notice to owner, but it is required when the contractor furnishes a payment bond that exempts the owner's property from liens or when the contract is for a public improvement.[13] A notice to contractor advises the contractor of the identity of the lienor and the lienor's work, and informs the contractor that the lienor intends to look to the contractor's bond if the lienor is not paid.

Notice of Nonpayment

A notice to owner or a notice to contractor makes an owner aware of the lienor's identity to ensure that the lienor is paid for its work. If a lienor is not paid immediately upon commencing to furnish labor, services, or materials on a construction project, however, the lienor may serve a notice of nonpayment on the property owner or, for contracts having a payment and performance bond, on the contractor and surety.[14] A notice of nonpayment "must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor."[15]

Final Furnishing of Labor, Services, and Materials and Lien Law Deadlines

The last date that a lienor furnishes labor, services, or materials is known as the "final furnishing."[16] This date is used to establish the deadline by which a lienor must record a claim of lien or the deadline for the service of a notice to contractor. "[A] claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor."[17]

Waiver and Release of Lien/Waiver of Claim Against Payment Bond

The Construction Lien Law requires lienors to use forms that "substantially" follow a statutory form when executing a waiver or release of lien or a waiver of a right to make a claim against a payment bond in exchange for payments.[18] The forms to waive or release a lien are shown below, but forms for payment bonds are essentially identical:

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[11] Section 713.06(2)(c), F.S.
[12] Section 713.06(2)(c), F.S.
[13] Sections 713.23(1)(a), 337.18(1)(c), and 255.05(2)(a)2., F.S.
[14] Sections 713.23(1)(d), 255.05(2)(a), and 337.18(1)(c), F.S.
[15] Section 713.23(1)(d), F.S. With respect to notices of nonpayment for public construction projects and construction maintenance projects, ss. 255.05(2)(a)2. and 337.18(2)(c), F.S., provide the same deadline.
[16] Section 713.01(12), F.S.
[17] Section 713.08(5), F.S.
[18] Sections 713.20(4) and (5) and 713.235(1) and (2), F.S.

WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of $____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(description of property)

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on ___, (year) . (Lienor)

By: _____

WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of $_____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

DATED on ____, (year) . (Lienor)

By: _____

Although the Construction Lien Law requires waivers and releases of liens to be executed on forms that substantially follow the statutory forms, the law also provides that noncompliant forms are enforceable. Specifically, the law states that "[a] lien waiver or lien release that is not substantially similar to the forms [above] is enforceable in accordance with the terms of the lien waiver or lien release."[19]

[19] Section 713.20(8), F.S. Section 713.235(5), F.S., relating to waivers of claims against payment bonds, is effectively identical: "A waiver that is not substantially similar to the forms in this section is enforceable in accordance with its terms."

Priority of Liens

Once a lienor satisfies all the statutory prerequisites and remains unpaid, the lienor may record a lien on the improved property, which is a prerequisite to foreclosing on the property. Normally, the priority of liens, which establishes the order in which claims are paid from the proceeds of a foreclosure sale, is determined by the order in which the liens are recorded.[20] Under the Construction Lien Law, however, all construction liens are treated as if they were recorded on the date that the notice of commencement was recorded.[21]

Once recorded, the priority of a construction lien in relation to other types of liens or mortgages is set forth in s. 713.07(3), F.S., which states:

> All [construction] liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens.[22]

As a result, a construction lien will generally take priority over other liens or mortgages recorded after the recording of the notice of commencement, and a construction lien is inferior to other liens or mortgages recorded before the recording of the notice of commencement.

Serving Notices

The proper functioning of the Construction Lien Law is substantially based on the delivery and receipt of notices among property owners, lienors, contractors, and sureties. With respect to public construction contracts, the law provides that a lienor, as a prerequisite to making a claim against a payment bond, must "serve a written notice of nonpayment on the contractor and on the surety."[23] Thus, the law appears to require a claimant to serve two original documents when providing a notice of nonpayment.

When instruments including notices are served, the Construction Lien Law allows service to be accomplished through by "actual delivery to the person to be served" and by "common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery."[24] The law further provides that service of an instrument is generally effective on the "date of mailing."[25] Because the law allows an instrument to be shipped or mailed, the law may imply that a different effective date applies if an instrument is delivered by a delivery service other than U.S. mail.

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[20] The rule "governing priority of lien interests is 'first in time is first in right.'" *Holly Lake Ass'n v. Fed. Nat'l Mortg. Ass'n*, 660 So. 2d 266, 268 (Fla.1995) (citing *Walter E. Heller & Co. Southeast, Inc. v. Williams*, 450 So. 2d 521, 532 (Fla. 3d DCA 1984), *review denied*, 462 So. 2d 1108 (Fla.1985)).
[21] Section 713.07(2), F.S. Similar provisions exist with respect to public contracting in s. 255.05(5)(d) and (f), F.S.
[22] Section 713.07(3), F.S.
[23] Sections 255.05(2)(a)2., F.S. Section 713.23(1)(d), F.S., with respect to private construction projects, contains almost identical language.
[24] Section 713.18(2)(a)(b), F.S.
[25] Section 713.13(3)(a), F.S.

Notices of Termination

An owner may terminate the effectiveness of a notice of commencement by recording a notice of termination.[26] In other words, by recording a notice of termination, a property owner can prevent the improved property from being subject to liens from unknown lienors. The property owner may record the notice of termination after all lienors who have served a notice to owner have been served with the notice of termination and after all lienors have been paid in full or paid their pro rata portion of the contractor's direct contract with the owner.[27]

The notice of termination may be effective as early as 30 days after it is recorded.[28] However, a lienor has 45 days after commencing to furnish labor, services, or materials to serve a notice to owner, which is a prerequisite to recording a lien on the improved property.[29] As a result, lienors who begin work within 15 days before a notice of termination is recorded may have their lien rights cutoff before the time period to serve a notice to owner expires.

III. Effect of Proposed Changes:

This bill revises several provisions of the Construction Lien Law, which is codified in part I of chapter 713, F.S., as detailed below.

Form Waivers and Releases (Sections 1, 9, & 12)

Existing law provides forms for a lienor to use to waive and release a lien or to waive a claim against a payment bond. However, the law also provides that waivers and releases remain enforceable even if they are not substantially similar to the statutory forms.

The bill provides that provisions of waivers and releases are unenforceable unless the claimant has otherwise agreed to those provisions in its direct contract. The statutory forms include a form to acknowledge payment for labor, services, or materials and a form waiver or release of a lien or the waiver of the right to make a claim against the contractor's payment bond. Accordingly, provisions included in a waiver or release that release a party from other liabilities or waive other rights are unenforceable under the bill.

Notice of Commencement Form Changes (Section 6)

The notice of commencement form for a construction project provides the name and address of the owner of the property to be improved and the names and addresses of others who may be responsible for the project, including the fee simple title holder, lessee, contractor, surety, and lender.

The bill makes technical changes to the notice of commencement form in a way that the owner and lessee, if any, will be identified on separate lines of the form.

[26] Section 713.132(1), F.S.
[27] Section 713.132(1)(e), (2), and (4), F.S.
[28] Section 713.13(4), F.S.
[29] Section 713.06(2)(a), F.S.

Serving Notices (Sections 1, 2, 8, & 11)

Existing statutes governing public contracting and construction or maintenance contracts with the Department of Transportation can be read to require a lienor to serve two original notices to contractor, one on the contractor and one on the surety, as a prerequisite to making a claim against the contractor's payment bond.[30] The bill provides that a lienor must serve an original notice to contractor on the contractor and that the surety need only receive a copy.

Existing s. 713.18(2), F.S., provides that service of an instrument under the Construction Lien Law is generally effective on the "date of mailing." As a result, the law may imply that a different effective date applies if a notice or other document is delivered by an authorized shipping service other than U.S. mail. The bill resolves this issue by providing that an instrument shipped by an authorized shipping service is effective on the date of "shipment."

Additionally, the bill provides that same requirements for serving documents under the Construction Lien Law apply to serving documents under s. 255.05, F.S., relating to public contracting and s. 337.18, F.S., relating to construction or maintenance contracts with the Department of Transportation.

Notices of Termination (Section 7)

Under existing law, a notice of termination is effective 30 days after it is recorded. However, existing law also provides a lienor with 45 days to serve a notice to owner after commencing work on a construction project to perfect his or her right to record a lien on the improved property. Similarly, existing law provides a lienor with 45 days to serve a notice to contractor on contracts secured by a bond. As a result of the conflicting time periods, a lienor who begins working on a construction project within the 15 days before a notice of termination is recorded can lose the right to record a lien on the property or make a claim against a bond.

The bill addresses the rights of lienors caught in the 15-day gap by providing that the notice of termination does not cutoff their rights to record a lien or make a claim against a payment bond if they serve a notice to owner within 45 days after commencing their work. The bill further provides that the notice of termination is not effective against these lienors until 30 days after they are served with a notice of termination.

Single Claim of Lien (Section 4)

A large construction project may result in a lienor receiving multiple contracts on the project. The bill provides that in these cases, the lienor can record a single consolidated lien, instead of a lien for each contract, to enforce the lienor's rights to payment.

Mobile Home Parks (Section 5)

The bill corrects a drafting error in existing law to clarify that mobile home parks are not subject to liens for improvements made by lessees, those owning a mobile home but not the lot.

[30] Sections 255.05(2)(a)1., and 713.23(1)(d), F.S.

Revised Defined Terms (Section 3)

The bill makes several clarifying changes to the definitions applicable to the Construction Lien Law. The term "clerk's office" is revised to include "another office serving as the county recorder as provided by law." The bill revises the definition of "contractor" to include general contractors who perform construction management services.

The definition of "real property" is revised to include expressly a private leasehold interest in government owned property. This change will clarify that a private leasehold interest can be subject to a lien when the real property itself cannot.

Identification of Recorded Documents (Sections 7 & 10)

The Construction Lien Law requires various documents to be recorded in the official records of a county. The book and page number assigned by the clerk is then required to be listed on other documents to facilitate the location of those documents by others. Instead of identifying documents by a book and page number, the bill requires that those documents be identified by the "official records' reference numbers and recording date affixed by the recording office."

Transfers of Liens to Security (Sections 13)

The bill recognizes that in some cases, a property owner may wish to transfer a disputed lien to security so that the property may be sold without a cloud on its title. In these cases, the bill provides that any attorney fees permissible under current law remain permissible after a lien is transferred to security.

Online notarization line (Sections 1, 6, & 11)

The construction lien laws require many different forms and notices to be notarized. The bill allows these forms to be notarized through the on-line notarization procedures.

Effective Date (Section 14)

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or 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 bill makes a number of changes that may clarify potential ambiguities in the Construction Lien Law. Additionally, the bill will minimize the ability of those with superior bargaining power to exact waivers or releases at the moment of payment that were not contemplated by the prior agreement of the parties.

Provisions of the bill changing procedures relating to notices of termination and defining as an improper payment a payment made before a notice of commencement is recorded will help lienors receive payment for their work. However, these same provisions may result in delayed final payments to contractors and discourage contractors from seeking advance deposits for construction work.

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: 255.05, 337.18, 713.01, 713.09, 713.10, 713.13, 713.132, 713.18, 713.20, 713.21, 713.23, 713.235, and 713.29.

IX. Additional Information:

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

CS by Judiciary on February 15, 2021:
The committee substitute removes a provision from the bill that states that a payment made by a property owner to a contractor before the notice of commencement is recorded is an improper payment.

The committee substitute restores a provision of existing law requiring an owner who contracts for an improvement to describe his or her interest in the property on the notice of commencement form.

The committee substitute also restores a provision of existing law allowing documents relating to construction liens to be served on partnerships, corporations, and limited liability companies by delivering those documents to a partner, officer, director, agent, member, or manager.

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 Judiciary; and Senator Perry

590-02128-21 2021622c1

A bill to be entitled

An act relating to liens and bonds; amending s. 255.05, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; revising the process for notarizing a notice of nonpayment; prohibiting a person from requiring a claimant to furnish a certain waiver in exchange for or to induce certain payments; providing that specified provisions in certain waivers are unenforceable; providing an exception; requiring service of documents to be made in a specified manner; amending s. 337.18, F.S.; providing that certain waivers apply to certain contracts; requiring service of documents to be made in a specified manner; amending s. 713.01, F.S.; revising definitions; amending s. 713.09, F.S.; authorizing a lienor to record one claim of lien for multiple direct contracts; amending s. 713.10, F.S.; revising the extent of certain liens; amending s. 713.13, F.S.; revising information to be included in a notice of commencement; revising the process for notarizing a notice of commencement; amending s. 713.132, F.S.; revising requirements for a notice of termination; amending s. 713.18, F.S.; requiring service of documents relating to construction bonds to be made in a specified manner; making technical changes; amending s. 713.20, F.S.; prohibiting a person from requiring a lienor to furnish a certain waiver or release in exchange for or to induce certain payments; providing that specified provisions in

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certain waivers or releases are unenforceable; providing an exception; amending s. 713.21, F.S.; authorizing the full or partial release of a lien under specified conditions; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; revising the process for notarizing a notice of nonpayment under a payment bond; amending s. 713.235, F.S.; prohibiting a person from requiring a lienor to furnish a certain waiver or release in exchange for or to induce certain payments; providing that specified provisions in certain waivers or releases are unenforceable; providing an exception; amending s. 713.29, F.S.; authorizing attorney fees in actions to enforce a lien that has been transferred to security; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (f) of subsection (2) of section 255.05, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

255.05 Bond of contractor constructing public buildings; form; action by claimants.—

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor’s agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk’s office a notice in substantially the following form:

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

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated ....., ..., and served on the undersigned on ....., ..., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on ....., ...

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest on ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written notice that he or she intends to look to the bond for

protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor and a copy of the notice on the surety. The notice of nonpayment shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the job site available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety are

~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. Claimant has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of claimant)...

STATE OF FLORIDA
COUNTY OF .....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or sworn to (or affirmed) by ☐ online notarization this .... day of ....,

...(year)..., by ...(name of signatory)....

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

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

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

Type of Identification Produced

(d) A person may not require a claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c) in exchange for, or to induce payment of, a progress payment or final payment unless the claimant has entered into a direct contract that requires the claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c).

(f) Any provisions in a waiver which are ~~that is~~ not related to the waiver of a claim or a right to claim against a payment bond as provided in this subsection are unenforceable, unless the claimant has otherwise agreed to those provisions in the direct contract ~~substantially similar to the forms in this subsection is enforceable in accordance with its terms~~.

(12) Unless otherwise provided in this section, service of any document must be made in accordance with s. 713.18.

Section 2. Paragraph (c) of subsection (1) of section 337.18, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

337.18 Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond

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

requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Written notices required or permitted under this section must ~~may~~ be served in accordance with ~~any manner provided in~~ s. 713.18, and provisions for the waiver of a claim or a right to claim against a payment bond contained in s. 713.235 apply to all contracts under this section.

(6) Unless otherwise provided in this section, service of

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any document must be made in accordance with s. 713.18.

Section 3. Subsections (4), (8), and (26) of section 713.01, Florida Statutes, are amended to read:

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

(4) "Clerk's office" means the office of the clerk of the circuit court of the county, or another office serving as the county recorder as provided by law, in which the real property is located.

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term also includes a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), respectively, who provides construction management services, which include responsibility for scheduling and coordination in both preconstruction and construction phases and for the successful, timely, and economical completion of the construction project, or who provides program management services, which include responsibility for schedule control, cost control, and coordination in providing or procuring planning, design, and construction.

(26) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political

subdivision. The term includes a private leasehold interest that is improved, and the improvements thereon, on land that is owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision.

Section 4. Section 713.09, Florida Statutes, is amended to read:

713.09 Single claim of lien.—A lienor may ~~is required to~~ record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract or multiple direct contracts. The single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land ~~under one direct contract~~ are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. If a ~~In each~~ claim of lien under this section is for multiple direct contracts, the owner under the direct contracts ~~contract~~ must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

Section 5. Paragraph (b) of subsection (2) of section 713.10, Florida Statutes, is amended, and subsection (4) is

added to that section, to read:

713.10 Extent of liens.—

(2)

(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

~~3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.~~

A notice that is consistent with subparagraph 2. effectively prohibits liens for improvements made by a lessee even if other leases for premises on the parcel do not expressly prohibit liens or if provisions of each lease restricting the application of liens are not identical.

(4) The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Section 6. Paragraphs (a), (c), and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.

4. The name and address of the lessee, if the ~~A~~ lessee ~~who~~ contracts for the improvements as ~~is~~ an owner as defined in s. 713.01 ~~under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest~~.

5.~~4.~~ The name and address of the contractor.

6.~~5.~~ The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

7.~~6.~~ The name and address of any person making a loan for the construction of the improvements.

8.~~7.~~ The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(c) If the contract between the owner and a contractor named in the notice of commencement expresses a period of time for completion for the construction of the improvement greater than 1 year, the notice of commencement must state that it is effective for a period of 1 year plus any additional period of time. Any payments made by the owner after the expiration of the notice of commencement are considered improper payments.

(d) A notice of commencement must be in substantially the following form:

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3.a. Owner: ...name and address....

b. Owner's phone number:.... ~~Owner information or Lessee information if the Lessee contracted for the improvement:~~

~~a. Name and address:.....~~

c.~~b.~~ Interest in property:.....

d.~~c.~~ Name and address of fee simple titleholder (if different from Owner listed above):.....

4.a. Lessee, if the lessee contracted for the improvement: ...(name and address)....

b. Lessee's phone number:..... ~~a.~~

5.a. Contractor: ...(name and address)....

b. Contractor's phone number:.....

6.~~5.~~ Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: $.....

7.a.~~6.a.~~ Lender: ...(name and address)....

b. Lender's phone number:.....

8.~~7.~~ Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

9.a.~~8.a.~~ In addition to himself or herself, Owner designates ..... of ..... to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:.....

10.~~9.~~ Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's

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Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...

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

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

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

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

Type of Identification Produced.....

Section 7. Subsections (1), (3), and (4) of section 713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

(a) The same information as the notice of commencement;

(b) The official records' ~~recording office document book and page~~ reference numbers and recording date affixed by the recording office on ~~of~~ the recorded notice of commencement;

(c) A statement of the date as of which the notice of

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commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded;

(d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies;

(e) A statement that all lienors have been paid in full; and

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination ~~on the contractor and~~ on each lienor who has a direct contract with the owner or who has timely served a notice to owner, and a statement that the owner will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(3) An owner may ~~not~~ record a notice of termination at any time after ~~except after completion of construction, or after construction ceases before completion and~~ all lienors have been paid in full or pro rata in accordance with s. 713.06(4).

(4) If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, ~~as the case may be,~~ is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination, ~~,~~ and any such

lienor has a right of action for damages ~~occasioned thereby~~.

(5) ~~(4)~~ A notice of termination must be served before recording on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner in accordance with this part before the recording of the notice of termination. A notice of termination must be recorded in the official records of the county in which the improvement is located. If properly served before recording in accordance with this subsection, the notice of termination terminates the period of effectiveness of the notice of commencement 30 days after the notice of termination is recorded in the official records ~~is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination~~ or a later ~~the~~ date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor who began work under the notice of commencement before its termination lacks a direct contract with the owner and timely serves his or her notice to owner after the notice of termination has been recorded, the owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination ~~if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner~~.

Section 8. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving documents ~~notices and other~~

~~instruments.~~

(1) Unless otherwise specifically provided by law, service of any document ~~notices, claims of lien, affidavits, assignments, and other instruments~~ permitted or required under this part, s. 255.05, or s. 337.18, or copies thereof when so permitted or required, ~~unless otherwise specifically provided in this part,~~ must be made by one of the following methods:

(a) By hand ~~actual~~ delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager.

(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail to the person to be served, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.

(2) Notwithstanding subsection (1), service of a notice to owner or a preliminary notice to contractor under this part, s. 255.05, or s. 337.18~~, or s. 713.23~~ is effective as of the date of mailing and the requirements for service under this section have been satisfied if:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served and addressed as prescribed ~~at any of the addresses set forth~~ in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials; and

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(c)1. The person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains ~~electronic~~ tracking records approved or generated by the United States Postal Service containing the postal tracking number~~, the name and address of the person served,~~ and verification of the date of receipt by the United States Postal Service.

(3)(a) Notwithstanding subsection (1), service of a document under ~~an instrument pursuant to~~ this section is effective on the date of mailing or shipping, and the requirements for service under this section have been satisfied, ~~the instrument~~ if the document ~~it~~:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a properly indexed notice of commencement that contains the information specified in s. 713.13(1)(b), ~~notice of commencement, to the last address shown in the building permit application, or~~ to the last known address of the person to be served unless otherwise specifically provided in this part, s. 255.05, or s. 337.18; and

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the document ~~item~~.

(b) If the address shown in the notice of commencement or

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any amendment thereto ~~to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application,~~ is incomplete for purposes of mailing or delivery, the person serving the document ~~item~~ may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A document ~~notice~~ served by a lienor on one owner or one partner of a partnership owning the real property is deemed served on ~~notice to~~ all owners and partners.

Section 9. Subsections (6) and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5) in exchange for, or to induce payment of, a progress payment or final payment unless the lienor has entered into a direct contract that requires the lienor to furnish a waiver or release that is different from the forms in subsection (4) or subsection (5).

(8) Any provisions in a lien waiver or lien release which are ~~that is~~ not related to the waiver or release of a lien or the right to claim a lien as provided in this section are unenforceable, unless the lienor has otherwise agreed to those provisions in the direct contract ~~substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release~~.

Section 10. Section 713.21, Florida Statutes, is amended to

read:

713.21 Discharge of lien.—A lien properly perfected under this chapter may be discharged, or released in whole or in part, by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk's office when not otherwise prohibited by law. This satisfaction shall be signed by the lienor, the lienor's agent or attorney and attested by said clerk. Any person who executes a claim of lien has ~~shall have~~ authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(2) By the satisfaction or release of the lienor, duly acknowledged and recorded in the clerk's office. The satisfaction or release must include the lienor's notarized signature and set forth the official records' reference numbers and recording date affixed by the recording office on the subject lien. Any person who executes a claim of lien has ~~shall have~~ authority to execute a satisfaction or release in the absence of actual notice of lack of authority to any person relying on the same.

(3) By failure to begin an action to enforce the lien within the time prescribed in this part.

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint therefor by any interested party the clerk shall issue a summons to the lienor to show cause within 20 days why his or her lien should not be enforced by action or vacated and canceled of record. Upon failure of the lienor to show cause why his or her lien should not be enforced or the lienor's

failure to commence such action before the return date of the summons the court shall forthwith order cancellation of the lien.

(5) By recording in the clerk's office the original or a certified copy of a judgment or decree of a court of competent jurisdiction showing a final determination of the action.

Section 11. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor and a copy of the notice on the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may

not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph

must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. The lienor has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of lienor)...

STATE OF FLORIDA
COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or sworn to (or affirmed) by ☐ online notarization, this .... day of ...., ...(year)..., by ...(name of signatory)....

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

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

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

Type of Identification Produced

Section 12. Subsections (3) and (5) of section 713.235, Florida Statutes, are amended to read:

713.235 Waivers of right to claim against payment bond; forms.—

(3) A person may not require a claimant to furnish a waiver that is different from the forms in subsections (1) and (2) in exchange for, or to induce payment of, a progress payment or final payment unless the claimant has entered into a direct contract that requires the claimant to furnish a waiver that is different from the forms in subsections (1) and (2).

(5) Any provisions in a waiver which are ~~that is~~ not related to the waiver of a claim or a right to claim against the payment bond as provided in this section are unenforceable,

unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~substantially similar to the forms in this section is enforceable in accordance with its terms~~.

Section 13. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney ~~Attorney's~~ fees.—In any action brought to enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

Section 14. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill #622**, relating to Liens and Bonds, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Statement of Intent:
Contract language should be considered separate from lien release forms, combining the language puts licensors at risk for not receiving payment owed once their part of the construction project is complete.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25-21
Meeting Date

622
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Lien Law

Name Kari Hebrank

Job Title

Address 215 S. Monroe #500
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 566-7824

Email Khebrank@gunster.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FHBA, National Utility 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.

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/20
Meeting Date

622
Bill Number (if applicable)

Topic Liens and Bonds

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title Lobbyist

Address 108 S Monroe Street
Street

Phone 8505700269

Tallahassee FL 32301
City *State* *Zip*

Email melissa@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Association of Credit Managers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

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

THE FLORIDA SENATE

APPEARANCE RECORD

03/25/2021
Meeting Date

622
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Liens and Bonds

Name Warren Husband

Job Title

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee FL 32302
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

SB 622
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Liens and Bonds

Name French Brown

Job Title Lobbyist

Address 106 East College Avenue, Suite 1200
Street

Phone 850-459-0992

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

Email fbrown@deanmead.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing Real Property, Probate, and Trust Law Section of the Florida Bar

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 626
INTRODUCER:	Criminal Justice Committee; Children, Families, and Elder Affairs Committee; and Senators Bracy and Torres
SUBJECT:	Juvenile Justice
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Fav/CS**
2.	Stokes	Jones	CJ	**Fav/CS**
3.	Moody	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 626, also cited as the "Kaia Rolle Act," creates s. 985.031, F.S., prohibiting a child younger than 7 years of age from being taken into custody, arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before he or she reaches 7 years of age, unless the violation of law is a forcible felony as defined in s. 776.08, F.S.

The bill does not have a fiscal impact on state or local governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Culpability of Children

There are various age limitations on criminal liability throughout the United States. A recent United Nations study suggests that all member states should set a minimum age of criminal

liability no younger than age 14.[1] Several states have enacted legislation to establish a minimum age at which children may be held criminally liable.[2] Of the states that have passed this legislation, the minimum age ranges from 6 to 12 years of age.[3] For instance, Massachusetts law protects children 12 years of age or younger from criminal liability[4] whereas North Carolina protects children 6 years of age or younger from criminal liability.[5] Fifteen jurisdictions set the minimum age for criminal liability at 10.[6] Some states have adopted exceptions to the minimum age requirement, such as Nevada which protects children who are 10 years of age or younger from criminal liability unless the child between 8 to 10 years old is charged with murder or a sexual offense.[7]

The Model Penal Code (MPC) sets out four kinds of culpability that may be required in any valid criminal conviction,[8] including "purposely,"[9] "knowingly,"[10] "recklessly,"[11] and "negligently."[12] Culpability requirements are not required for a person to be convicted of a crime that provides for strict liability.[13] Some studies suggest, and precedents from the U.S. Supreme Court have held, that adolescents have a diminished capacity to make consistent choices, engage in self-management, assess risk perception, and calculate future consequences,[14] in other words, to formulate the required culpability.

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[1] National Juvenile Defender Center, *Minimum Age for Delinquency Adjudication – Multi-jurisdiction Survey*, (January 22, 2020) available at https://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/ (last visited March 9, 2021) (hereinafter cited as "NJDC Article").
[2] NJDC Article; *See also* Interstate Commission for Juveniles, *Age Matrix*, available at https://www.juvenilecompact.org/age-matrix (last visited March 9, 2021).
[3] NJDC Article.
[4] Section 119.52, M.G.L.
[5] Section 7B-1501(7), N.C.G.S.
[6] NJDC Article (citing American Samoa, Arkansas, Arizona, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Pennsylvania, South Dakota, Texas, Vermont, and Wisconsin).
[7] Section 194.010, N.R.S.
[8] Section 2.02(1), M.P.C.
[9] Section 2.02(2)(a), M.P.C. If the material element of an offense involves the nature of a person's conduct or a result thereof, a person acts purposely when it is his conscious object to engage in conduct of that nature or to cause such a result, and, if a material element involves the attendant circumstances, he is aware of them or he believes or hopes that they exist. Material element means issues relating to the harm or evil sought to be prevented by the law. MPC s. 1.13(10).
[10] Section 2.02(2)(b), M.P.C. If a material element of an offense involves the nature of a person's conduct or the attendant circumstances, a person acts knowingly when he is aware that his conduct is of that nature or that such circumstances exist, and, if the material element involves the result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.
[11] Section 2.02(2)(c), M.P.C. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, his conduct involves a gross deviation from the standard that a law-abiding person would observe in the actor's situation.
[12] Section 2.02(2)(d). M.P.C. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.
[13] Section 2.05, M.P.C.
[14] Jenny E. Carroll, *Brain Science and the Theory of Juvenile Mens Rea*, 94 N.C. L. REV. 539, 582 (2016). *See also Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

Offenses Committed by Children

A person may not be tried for a capital crime without presentment or indictment by a grand jury, or for any other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duties in the militia when tried by courts martial.[15]

However, a child may be charged with a violation of law as an act of delinquency instead of a crime and tried without a jury or other requirements applicable to criminal cases.[16] If a child is found to be delinquent, he or she must be disciplined as provided by law.[17]

Under ch. 985, F.S., the terms child, juvenile or youth currently mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.[18] However, Florida law does not presently restrict the age in which a child, juvenile, or youth may be taken into custody, charged with a violation of the law, or adjudicated delinquent.

The Department of Juvenile Justice (DJJ) reports that in FY 2019-20 12,224 youth at least 7 years of age but younger than 15 years of age were referred to the DJJ for charges ranging from murder and kidnapping to armed robbery and sexual battery.[19] The most common of these offenses were misdemeanor assault and battery (19%), burglary (14%), felony aggravated assault and battery (11%), and petit theft (5%).[20] A total of 2,200 youth ages 7 years or older but younger than 15 years of age were admitted to secure detention.[21]

Florida's Juvenile Justice System

The DJJ is tasked with providing a full continuum of care to youth, including but not limited to, prevention,[22] diversion,[23] detention,[24] probation,[25] and residential commitment.[26, 27]

[15] FLA. CONST. art. I, s. 15(a).
[16] FLA. CONST. art. I, s. 15(b).
[17] *Id.*
[18] Section 985.03(7), F.S.
[19] The DJJ, *Agency Analysis for SB 626,* p. 3, February 8, 2021 (On file with the Senate Committee on Criminal Justice) (hereinafter cited as "DJJ Analysis").
[20] *Id*.
[21] *Id.*
[22] *See* s. 985.17, F.S.
[23] Section 985.12, F.S. (providing for civil citation or similar arrest diversion programs).
[24] Chapter 985, Part V., F.S.
[25] Section 985.435, F.S.
[26] Section 985.441, F.S. Sections 985.435(1) and 985.441(1), F.S., provide the court with jurisdiction to sanction children who are adjudicated delinquent to probation or residential commitment.
[27] DJJ Analysis at p. 2.

Prevention Services

The purpose of prevention services mandated under ch. 985, F.S., is to reduce recidivism, prevent further involvement in the juvenile justice system, protect public safety, and assist with at-risk youth's reentry into the community.[28] As a condition of state funds, the DJJ is required, in part, to design programs providing services to further one or more of the following strategies:

- Design the programs providing such services to further one or more of the following strategies:
  - Encouraging youth to attend and succeed in school.
  - Engaging youth in productive and wholesome activities during non-school hours that build positive character, instill positive values, and enhance educational experiences.
  - Encouraging youth to avoid the use of violence.
  - Assisting youth in acquiring the skills needed to find meaningful employment, which may include assisting the youth in finding a suitable employer.
- Provide demographic information, dates of services, and types of interventions received by each youth.[29]

Prevention serves at-risk children but is not an alternative for an arrest or charges. These services are offered to at-risk children who have not committed a delinquent act and have not been taken into custody or arrested.[30] Children are often referred to prevention programs such as Big Brothers Big Sisters, Boys and Girls Clubs, PACE Center for Girls, and other smaller community provided programs. These children often have displayed early warning signs of negative behaviors such as poor school attendance and academic performance, disciplinary issues, substance abuse, mental health issues, or negative peer associations. Children may be referred to a prevention program by a school counselor, teacher, a clergy member, friend or parent. In FY 2019-20, 990 children under the age of 7 were referred to a prevention program.[31]

Civil Citation and Prearrest Diversion

A civil citation or prearrest diversion program for misdemeanors must be established in each judicial circuit.[32] However, the Legislature encourages, but does not mandate, that counties, municipalities, and public or private educational institutions participate in a civil citation or similar diversion program.[33]

[28] Section 985.17(1), F.S.
[29] Section 985.17(4)(a), F.S.
[30] The DJJ, Electronic mail from Rachel Moscoso, Legislative Affairs Director, RE: Agency Bill Analysis for SB 626, February 8, 2021 (on file with the Senate Committee on Criminal Justice).
[31] *Id*.; The DJJ, Electronic mail from Sam Kerce, Deputy Legislative Affairs Director, RE: Prevention Youth, March 12 2021 (on file with the Senate Committee on Criminal Justice).
[32] Section 985.12(2), F.S.
[33] Section 985.12(1), F.S.

Each circuit civil citation or similar prearrest diversion program must specify:

- The misdemeanor offenses that qualify a juvenile for the program.
- Eligibility criteria of the program.
- The program's implementation and operation.
- The program's requirements.
- A program fee.[34]

Examples of program requirements include community service, restitution, family counseling, substance abuse, and mental health treatment.[35] A civil citation or similar diversion program has been implemented in 65 counties in Florida.[36] Bradford and Hardee counties have not established such a program.[37]

Since 2011, over 76,000 eligible first-time youth offenders who have committed a misdemeanor offense have been offered a civil citation pre-arrest to participate in a division program.[38] The DJJ reports that only 2 children under the age of 7 were issued a civil citation for FY 2019-2020.[39]

Taking a Child into Custody

A child may only be taken into custody of the DJJ under certain circumstances. A child may be taken into custody:

- Pursuant to an order of the circuit court issued under ch. 985, F.S., based on sworn testimony, either before or after a petition is filed.
- For a delinquent act or violation of law.
- By a law enforcement officer for failing to appear at a court hearing after being properly noticed.
- By a law enforcement officer who has probable cause to believe that the child is in violation of the child's probation, supervised release detention, postcommitment probation, or conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment.[40]

When a child violates the law, the arresting officer may elect to release the child as provided by law to a parent, responsible adult relative, or legal guardian, and issue a notice to appear at a

[34] Section 985.12(2)(b)1. and 2., F.S.
[35] Section 985.12(2)(b)4., F.S. The DJJ, *Overview Look Here to Locate the Civil Citation Provider in your Area*, available at http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-contact-list.pdf?sfvrsn=2 (last visited March 12, 2021) (listing the civil citation and similar prearrest diversion programs in Florida, and depicting the process for civil citation and similar prearrest diversion programs in a flow chart).
[36] Florida Department of Juvenile Justice, *Civil Citation Implementation by County as of October 2019*, available at http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-implementation-map-10-2020.pdf?sfvrsn=4 (last visited March 9, 2021).
[37] *Id.*
[38] DJJ Analysis at p. 2. *See also* The DJJ, *Civil Citation and Similar Diversion Program Best Practices Guide*, (2020), available at http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-and-similar-diversion-program-best-practices-guide-2020.pdf?sfvrsn=2 (last visited March 9, 2021) (explaining statewide utilization for the fiscal year 2019-20 was 59 percent).
[39] The DJJ, Electronic mail from Rachel Moscoso, Legislative Affairs Director, RE: Agency Bill Analysis for SB 626, February 8, 2021 (on file with the Senate Committee on Criminal Justice).
[40] Section 985.101(1)(a)-(d), F.S.

designated court or government office at a specified date and time provided conditions articulated under the rules are met.[41] In FY 2019-20, the DJJ reported that 2 children were charged with a violation of the law, but no petition for delinquency was filed in either case.[42]

Intake and Assessment

Every child under the age of 18 charged with a crime in Florida is referred to the DJJ.[43] Intake and screening services for youth referred to the DJJ are performed at a Juvenile Assessment Center,[44] but must be performed by a DJJ employee.[45] The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child.[46] Once a child is in the custody of the DJJ, the DJJ determines whether detention care is appropriate.[47] The DJJ makes an initial decision regarding detention care placement using the "Detention Risk Assessment Instrument."[48] In certain instances, the DJJ does not have discretion and must place a child in secure detention (e.g., when a child is charged with possessing or discharging a firearm on school property).[49] The DJJ serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.[50]

Detention of Children

"Detention care" is "the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order."[51] There are two types of detention care, including:

- "Secure detention" which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- "Supervised release detention" which is the temporary, nonsecure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or

[41] *See* Rule 8.045(b), Fla. R. Juv. P. An officer may issue a notice to appear unless: (1) the child fails or refuses to sufficiently identify himself or herself or supply the required information; (2) the child refuses to sign the notice to appear; (3) the officer has reason to believe that the continued liberty of the child constitutes an unreasonable risk of bodily injury to the child or others; (4) the child has no ties with the jurisdiction reasonably sufficient to ensure an appearance or there is substantial risk that the child will refuse to respond to the notice; (5) the officer has any suspicion that the child may be wanted in any jurisdiction; or (6) it appears that the child has previously failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.
[42] The DJJ, Electronic mail from Rachel Moscoso, Legislative Affairs Director, RE: Agency Bill Analysis for SB 626, February 8, 2021 (on file with the Senate Committee on Criminal Justice).
[43] A referral is similar to an arrest in the adult criminal justice system. *See* the DJJ, *Probation and Community Intervention, Overview*, available at http://www.djj.state.fl.us/services/probation (last visited March 9, 2021).
[44] Section 985.135(4), F.S.
[45] Section 985.14(2), F.S.
[46] *Id.* The intake process consists of a preliminary screening and may be followed by a comprehensive assessment, consisting of a full mental health, cognitive impairment, substance abuse, or psychosexual evaluation.
[47] Section 985.25(1), F.S.
[48] Sections 985.25(1) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.
[49] Section 985.25(1)(b), F.S.
[50] Section 985.145(1), F.S.
[51] Section 985.03(18), F.S.

disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.[52]

A child is entitled to a hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care only under certain circumstances.[53] Generally, a child may not be held in detention care for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court.[54]

Probation or Postcommitment Probation (Probation)

After a child is found to have committed a delinquent act, the court must hold a disposition hearing.[55] At the disposition hearing, the court must determine whether the child will be committed to the DJJ or receive community based sanctions. If the court determines not to commit the child to the DJJ, the court must determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to:

- Participation in substance abuse treatment.
- A day-treatment probation program.
- Restitution in money or in kind.
- A curfew.
- Revocation or suspension of the driver license of the child.
- Community service.
- Appropriate educational programs as determined by the district school board.[56]

A probation program for a child adjudicated delinquent must include a penalty component,[57] and a rehabilitative program component.[58] A probation program may also include an alternative

[52] *Id.*

[53] Section 985.255(1), F.S. Provides that a court may order continued detention care when: (1) the result of the risk assessment instrument pursuant to s. 985.245, F.S., indicates secure or supervised release detention; (2) the child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program; and (3) the child is detained on a judicial order for failure to appear, after proper notice for an adjudicatory hearing on the same case, regardless of the results of the risk assessment; or at two or more court hearings of any nature on the same case regardless of the results of the risk assessment.

[54] Section 985.26, F.S. The court may extend the length of detention for an additional 9 days if the child is charged with certain offenses, and there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case. Additionally, a prolific juvenile offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order. Section 985.255, F.S., provides that a "prolific juvenile offender" means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

[55] Section 985.433, F.S.

[56] Section 985.433(8), F.S.

[57] Section 985.435(2), F.S. A penalty component may include restitution, community service, a curfew, revocation or suspension of the driver license, or other nonresidential punishment appropriate to the offense.

[58] Section 985.435(3), F.S. A rehabilitative component may include a substance abuse treatment program, or a school or career and technical education program.

consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new law violations.[59]

Residential Commitment

The court may commit a child who has been adjudicated delinquent to: a licensed child-caring agency willing to receive the child or to the DJJ.[60] Commitment programs vary by "restrictiveness level," which means "the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children."[61] Levels of commitment are:

- Minimum-risk nonresidential where children remain in their community and participate at least 5 days a week in day treatment;
- Nonsecure residential where children are in a residential program and have supervised access to their community;
- High-risk residential where children are not allowed access to their community with limited exception; and
- Maximum-risk residential including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to their community.[62]

If the child's offense is a misdemeanor, or a technical violation of misdemeanor probation, the court may not commit the child to a restrictiveness level other than minimum-risk nonresidential, except in certain circumstances.[63]

Forcible Felony Offenses

Section 776.08, F.S., defines "forcible felony" to mean:

- Treason;[64]
- Murder;[65]
- Manslaughter;[66]
- Sexual battery;[67]
- Carjacking;[68]

[59] Section 985.435(4), F.S. The alternative consequence component is designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation must be detailed in the disposition order.
[60] Section 985.441(1), F.S.
[61] Section 985.03(44), F.S.
[62] Section 985.03(44), F.S. Florida law caps the number of beds at maximum-risk residential facilities at 90 beds each.
[63] Section 985.441(2), F.S. The court may commit a child with a misdemeanor or a technical violation of a misdemeanor offense if: (1) the child has previously been adjudicated or had adjudication withheld for a felony; (2) the child has previously been adjudicated or had adjudication withheld for three or more misdemeanor offenses within the previous 18 months; (3) the child is before the court for disposition for a violation of ss. 800.03, 806.031, or 828.12, F.S.; or (4) the court makes written findings by preponderance of the evidence that the protection of the public requires such placement or that the particular needs of the child would be best served by such placement.
[64] Section 876.32, F.S.
[65] Section 782.04, F.S.
[66] Section 782.07(1), F.S.
[67] Section 794.011, F.S.
[68] Section 812.133, F.S.

- Home-invasion robbery;[69]
- Robbery;[70]
- Burglary;[71]
- Arson;[72]
- Kidnapping;[73]
- Aggravated assault;[74]
- Aggravated battery;[75]
- Aggravated stalking;[76]
- Aircraft piracy;[77]
- Unlawful throwing, placing, or discharging of a destructive device or bomb;[78] and
- Any other felony which involves the use or threat of physical force or violence against any individual.

III. Effect of Proposed Changes:

The bill, also cited as the "Kaia Rolle Act," creates s. 985.031, F.S., prohibiting a child younger than 7 years of age from being taken into custody, arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before he or she reaches 7 years of age, unless the violation of law is a forcible felony as defined in s. 776.08, F.S.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill prohibits a child under the age of 7 from being arrested, charged with a violation of the law, or adjudicated delinquent except in specified circumstances which may result in indeterminate reduction of local fund expenditures for costs relating to criminal prosecution and confinement if such child would have otherwise been detained or charged with a crime. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law and are therefore exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

[69] Section 812.135, F.S.
[70] Section 812.13, F.S.
[71] Section 810.02, F.S.
[72] Section 806.01, F.S.
[73] Section 787.01, F.S.
[74] Section 784.021, F.S.
[75] Section 784.045, F.S.
[76] Section 784.048, F.S.
[77] Section 860.16, F.S.
[78] Section 790.1615, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments.

The Florida Department of Law Enforcement will be required to amend basic recruit and advanced training course curriculums in relation to the new custody and detention laws which may be incorporated in annual training review courses.[79]

The Justice Administrative Commission reports that the bill will have no policy, workload, or fiscal impacts on the agency.[80]

The DJJ does not indicate a fiscal impact but notes that while this bill would divert youth from the criminal justice system, it is not clear what services a youth may receive in place.[81]

VI. Technical Deficiencies:

None.

[79] The Florida Department of Law Enforcement, *Agency Analysis for 626*, p. 5, January 20, 2021 (on file with the Senate Committee on Criminal Justice).
[80] The Justice Administrative Commission, *Memorandum No. 13-21, Exec*, p. 1, February 8, 2021 (on file with the Senate Committee on Criminal Justice).
[81] The Department of Juvenile Justice, *Agency Analysis for 626*, p. 5, February 8, 2021 (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 985.031 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 Criminal Justice on March 16, 2021:
The committee substitute adds the language, "taken into custody," to be consistent with the terminology used in ch. 985, F.S., regarding children.

CS by Children, Families, and Elder Affairs on March 2, 2021:
The committee substitute provides an:

- Age limitation related to arresting, charging, or adjudicating delinquent a child; and
- Exception for if the child is alleged to have committed a specified offense.

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 Committees on Criminal Justice; and Children, Families, and Elder Affairs; and Senators Bracy and Torres

591-02928-21 2021626c2

A bill to be entitled

An act relating to juvenile justice; creating s. 985.031, F.S.; providing a short title; prohibiting a child younger than a certain age from being taken into custody, arrested, charged, or adjudicated delinquent for a delinquent act or violation of law; providing an exception; providing an effective date.

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

Section 1. Section 985.031, Florida Statutes, is created to read:

985.031 Age limitation; exception.—

(1) This section may be cited as the "Kaia Rolle Act."

(2) A child younger than 7 years of age may not be taken into custody, arrested, charged, or adjudicated delinquent for a delinquent act or violation of law based on an act occurring before he or she reaches 7 years of age, unless the violation of law is a forcible felony as defined in s. 776.08.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Ethics and Elections
Rules
Transportation

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response, *Vice Chair*

SENATOR RANDOLPH BRACY
11th District

March 18, 2021

The Honorable Kathleen Passidomo
Chair, Committee on Rules
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair:

I write to respectfully request that the following bill be placed on the agenda of the Senate Rules Committee.

- **CS/CS/SB 626 – Juvenile Justice:** this bill creates the *Kaia Rolle Act* which prohibits children younger than 7 years old from being taken into custody, arrested, charged, or adjudicated delinquent except for any child who commits a forcible felony.

Your consideration to this agenda request is highly appreciated. Please reach out if you have any questions or concerns regarding the legislation.

Sincerely,

Senator Randolph Bracy
District 11

REPLY TO:
❒ 6965 Piazza Grande Avenue, Suite 302, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
❒ 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

626
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/21
Meeting Date

SB 626
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Juvenile Justice

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.
Street

Phone 850-681-0024

Tallahassee FL 32301
City *State* *Zip*

Email jorge@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/21
Meeting Date

626
Bill Number (if applicable)

Topic Kaia Rolle Act

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Director

Address P.O. Box 10788 *Street*

Phone 850-570-9560

Tallahassee *City* FL *State* 32309 *Zip*

Email carrie.boyd@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

626
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate Director for Social Concerns & Respect Life

Address 201 W Park Av
Street

Phone 850-339-0075

Tallahassee FL 32301
City *State* *Zip*

Email idelgado@flaccb.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

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.

This information was not read into the record by the Chair

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 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	**Favorable**

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 interest[2] 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]

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[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.

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 Judiciary; and Senator Thurston

590-02341-21 2021702c1

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

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

590-02341-21 2021702c1

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.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture
Appropriations Subcommittee on Agriculture, Environment, and General Government
Banking and Insurance
Education
Judiciary
Rules

SENATOR PERRY E. THURSTON, JR.
33rd District

March 5, 2021

The Honorable Kathleen Passidomo
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo,

I am writing you this letter because my CS/SB 702: Individual Retirement Accounts has been referred to the Senate Rules Committee. I am writing respectfully requesting you to place the bill on your committee's calendar for the next committee agenda.

SB 702 intent is to 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.

Thank you for your consideration. Please contact me if you have any question.

Respectfully,

Perry E. Thurston, Jr.
State Senator, District 33

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/21
Meeting Date

702
Bill Number (if applicable)

Topic Individual Retirement Accounts (Rules)

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 728
INTRODUCER:	Senator Broxson
SUBJECT:	Credit for Reinsurance
DATE:	March 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Favorable**
2.	Davis	Cibula	JU	**Favorable**
3.	Arnold	Phelps	RC	**Favorable**

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 agreement[1] 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]

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[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-owned[13] 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 reinsurers[16] 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.

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[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 reinsurers[19] 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]

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[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%2012-2019_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 agreement[36] 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.

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

By Senator Broxson

1-00660A-21 2021728__

A bill to be entitled

An act relating to credit for reinsurance; amending s. 624.610, F.S.; making a technical change; 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; adding conditions under which a ceding insurer must be allowed credit for reinsurance; defining the terms "reciprocal jurisdiction" and "covered agreement"; specifying requirements for assuming insurers and reinsurance agreements; requiring the office to publish a list of reciprocal jurisdictions on its website; authorizing the office to remove reciprocal jurisdictions under a specified circumstance; specifying documentation requirements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; providing construction; specifying a limitation on credit taken by a ceding insurer; requiring the office to publish on its website a list of certain assuming insurers; authorizing the office to revoke or suspend an assuming insurer's eligibility under certain circumstances; prohibiting credit for reinsurance under certain circumstances; providing exceptions; making technical changes; conforming provisions to changes made by the act; providing an effective date.

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

1-00660A-21 2021728__

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

Section 1. Present subsections (4) through (15) of section 624.610, Florida Statutes, are redesignated as subsections (5) through (16), respectively, a new subsection (4) is added to that section, and subsection (2), paragraphs (c), (e), and (f) of subsection (3), present subsection (4), paragraph (a) of present subsection (5), and paragraph (b) of present subsection (11) are amended, to read:

624.610 Reinsurance.—

(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a reduction ~~deduction~~ from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3)(a), paragraph (3)(b), ~~or~~ paragraph (3)(c), or subsection (4). Credit must be allowed under paragraph (3)(a) or paragraph (3)(b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (6)(b) ~~(5)(b)~~, for the payment of the valid claims of its United States ceding insurers and their assigns and

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successors in interest. To enable the office to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the office information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers. The assuming insurer shall submit to examination of its books and records by the office and bear the expense of examination.

2.a. Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(I) The insurance regulator of the state in which the trust is domiciled; or

(II) The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

b. The form of the trust and any trust amendments must be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the insurance regulator.

c. The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of

each year, the trustee of the trust shall report to the insurance regulator in writing the balance of the trust and list the trust's investments at the preceding year end, and shall certify that the trust will not expire prior to the following December 31.

3. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million. Not less than 50 percent of the funds in the trust covering the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and trusteed surplus shall consist of assets of a quality substantially similar to that required in part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made and in the possession of the trust on or before the filing date of its annual statement, may be used to fund the remainder of the trust and trusteed surplus.

b.(I) In the case of a group including incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust consists of a trusteed account in an amount not

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 trusteed 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 trusteed 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

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

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

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

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

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.

5. Additional information as reasonably required by the office.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements and must report to the office reinsurance recoverables that are more than 90 days overdue or that are in dispute, as specified by commission rule.

(g) The assuming insurer must annually provide to the office confirmation from its reciprocal jurisdiction, on a form adopted by the commission or as otherwise specified by commission rule, that, as of the preceding December 31 or as of the annual date otherwise statutorily reported to the reciprocal jurisdiction, the assuming insurer complied with the requirements of paragraphs (b) and (c).

(h) This subsection does not preclude an assuming insurer from providing the office with information on a voluntary basis.

(i) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer or its representative may seek and, if determined appropriate by the court in which the proceedings are pending, obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(j) This subsection does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in the reinsurance agreement, except as expressly prohibited by this section or other applicable law or commission rule.

(k)1. Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or

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

after the date on which the assuming insurer has satisfied the requirements to assume reinsurance under this subsection, and only with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements pursuant to this subsection or the effective date of the new reinsurance agreement, amendment, or renewal.

2. This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance for which, and to the extent that, credit is not available under this subsection, if the reinsurance qualifies for credit under any other applicable provision of law or commission rule.

3. This subsection does not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as authorized by the terms of the agreement.

4. This subsection does not limit or alter in any way the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(l) The office shall timely publish on its website a list of assuming insurers that meet all of the requirements of this subsection.

(m) If the office determines that an assuming insurer no longer meets one or more of the requirements of this subsection, the office may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1. During the suspension of an assuming insurer's eligibility, a reinsurance agreement issued, amended, or renewed after the effective date of the suspension does not qualify for

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

credit, except to the extent that the assuming insurer's obligations under the contract are secured in accordance with subsection (5).

2. If an assuming insurer's eligibility is revoked, a credit for reinsurance may not be granted after the effective date of the revocation with respect to any reinsurance agreement entered into by the assuming insurer, including a reinsurance agreement entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the office and consistent with subsection (5).

(5) ~~(4)~~ An asset allowed or a reduction ~~deduction~~ from liability taken for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2), ~~and~~ (3), and (4) is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction ~~deduction~~ must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (6)(b) ~~(5)(b)~~. This security may be in the form of:

(a) Cash in United States dollars;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets pursuant to part II of chapter

625;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(d) Any other form of security acceptable to the office.

(6)(a) ~~(5)(a)~~ For purposes of paragraph (5)(c) ~~(4)(c)~~ regarding letters of credit, a "qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by United States or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the office.

(12) ~~(11)~~

(b) The summary statement must be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the office may require the filing of any supporting information relating to the ceding of such risks as it deems

necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the office that the relevant reinsurance treaty or treaties comply with the accounting requirements contained in any rule adopted by the commission under subsection (15) ~~(14)~~. If such certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate must state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 5, 2021

I respectfully request that **Senate Bill 728**, relating to Credit for Reinsurance , be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

This good bill will update Florida law to conform with recent changes in Federal law and will allow us to continue to meet the accreditation standards of the National Association of Insurance Commissioners.

Senator Doug Broxson
Florida Senate, District 1

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/21
Meeting Date

728
Bill Number (if applicable)

Topic Credit for Reinsurance

Amendment Barcode (if applicable)

Name Allison Hess Sitte

Job Title Government Affairs Director

Address 200 E. Gaines Street
Street

Phone 413-5005

Tallahassee FL 32399
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of Insurance Regulation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

SB 728
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Credit for Reinsurance

Name Timothy J. Meenan

Job Title Lobbyist

Address PO Box 11247
Street

Phone 8504254000

Tallahassee FL 32302
City *State* *Zip*

Email tim@meenanlawfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Insurance Council

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.

This information was not read into the record by the Chair

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 738
INTRODUCER:	Rules Committee and Senator Baxley
SUBJECT:	Bicycle Operation Regulations
DATE:	March 26, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.	Price	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 also amends existing electric bicycle regulations that afford an electric bicycle or electric bicycle operator the same rights, privileges, and duties of a bicycle or bicycle operator, providing that such regulations do not prevent a municipality, county, or agency of the state with jurisdiction over a beach or dune from restricting or prohibiting the operation of an electric bicycle on such beach or dune.

The bill, with respect to riding a bicycle manufactured without a seat, 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 fiscal impact of the provision relating to electric bicycles is unknown.

The bill takes effect July 1, 2021.

II. Present Situation:

Bicycles

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 wheels[1] 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.

Attached Bicycle Seats

Florida Bicycle Law

Section 316.003(4), F.S., defines the term "bicycle" to mean "every vehicle[2] 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.

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[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).
[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.

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.

Regulation of Electric Bicycles

Under current law, an electric bicycle[9] or an operator of an electric bicycle is generally afforded all the rights and privileges and is subject to all of the duties of a bicycle or a bicycle operator.[10] However, current law does not prevent a local government, through the exercise of its powers under s. 316.008, F.S.,[11] from adopting an ordinance governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction, nor to prevent a municipality, county, or state agency with 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.[12]

Beach Access and Use

Article X, Section 11 of the Florida Constitution provides that the state holds the land seaward of the mean high-tide line (MHTL) in trust for the public, leaving the public a right of access below the MHTL, as depicted in the graphic below.[13] Known as the "Public Trust Doctrine," the traditionally contemplated public access for fishing, commerce, and navigation has been more recently expanded to include recreational uses.[14] Beaches are treated as essential public coastal recreational resources, as is reflected in the State Comprehensive Plan, which expressly states with respect to coastal and marine resources a policy of ensuring the public's right to reasonable access to beaches.[15] Private beachfront property, however, extends to the MHTL, unless the dry beach is owned for public use, such as in local, state, or federal parks; but private property owners may have the ability to exclude public access to or through their property.[16]

---

[9] Section 316.003(22), F.S., defines the term "electric bicycle" to mean a bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts which meets…" one of three classifications of electric bicycles, depending upon whether a rider is pedaling, whether the motor is capable of exclusive propulsion of the electric bicycle, and the speed at which the motor ceases to provide propulsion assistance. These bicycles are, as indicated, motorized.

[10] Section 316.20655(1), F.S.

[11] Current law states that the provisions of chapter 316, F.S., relating to uniform traffic control, do not prevent local authorities, with respect to *streets and highways* under their jurisdiction and within the reasonable exercise of the police power, from enacting a broad list of approved regulations, one of which specifically refers to regulating the operation of bicycles. Section 316.008, F.S.,

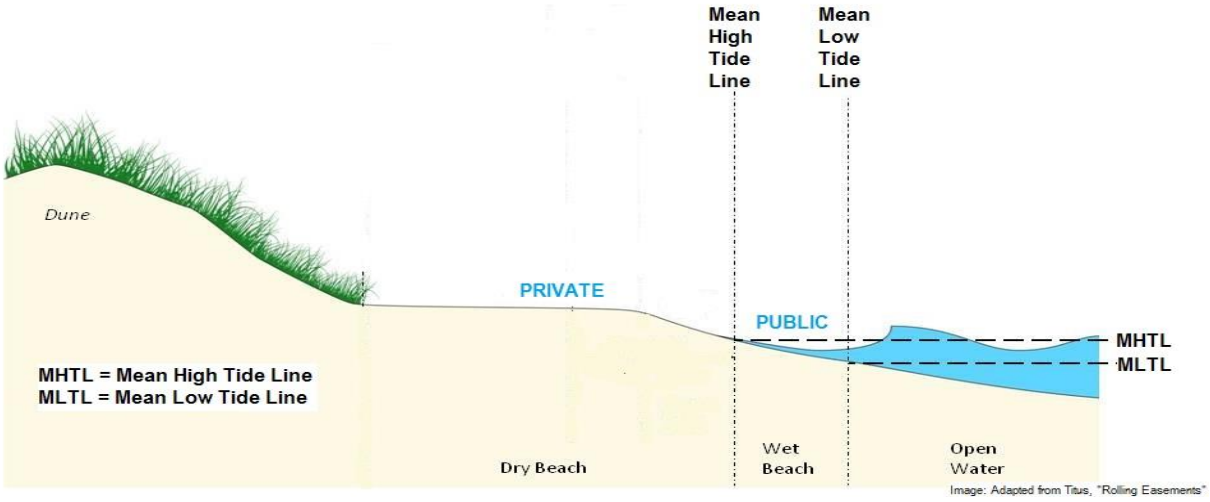
[12] *Supra* note 10.

[13] *See* Sea Grant Florida, *Beaches*, available at https://www.flseagrant.org/wateraccess/beaches/#:~:text=Affairs%201995).-,Beach%20Users,in%20trust%20for%20the%20public. (last visited March 24, 2021). "Florida Sea Grant is a university-based program [at the University of Florida] that supports research, education, and extension to conserve coastal resources and enhance economic opportunities for the people of Florida. *See* Sea Grant Florida, *About Us*, available at https://www.flseagrant.org/about/ (last visited March 24, 2021).

[14] *Id.*

[15] Section 187.201(8)(b)(2), F.S.

[16] *Id.*



Definitions

The term "beach" is defined for purposes of construing the Coastal Zone Protection Act of 1985,[17] to mean "the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. 'Beach' is alternatively termed 'shore.'"[18]

The term "dune" is defined for the same purpose to mean "a mound or ridge of loose sediments, usually sand-sized sediments, lying landward of the beach and deposited by any natural or artificial mechanism.[19]

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.

The bill also amends s. 316.2065(1), F.S., providing that bicycle regulations that afford an electric bicycle or electric bicycle operator the same rights, privileges, and duties of a bicycle or bicycle operator do not prevent a municipality, county, or agency of the state with jurisdiction over a beach or dune, defined as described above, from restricting or prohibiting the operation of an electric bicycle on such beach or dune. Under the bill, a municipality, a county, or a state agency with jurisdiction over a beach or dune may regulate the operation of electric bicycles on such beach or dune, which would include prohibiting such operation.

[17] Sections 161.52-161.58, F.S.
[18] Section 161.54(3), F.S.
[19] Section 161.54(4), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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. To the extent that any municipality, county, or state agency enacts ordinances or rules restricting or prohibiting the operation of electric bicycles on beaches or dunes, electric bicycle riders may be subject to payment of a penalty for a violation. However, the extent of any fiscal impact resulting from a potential penalty is unknown.

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.[20]

To the extent that any municipality, county, or state agency enacts ordinances or rules restricting or prohibiting the operation of electric bicycles on beaches or dunes, that entity will likely incur insignificant administrative expenses associated with enacting such ordinances or adopting such rules, offset by collection of potential penalties. The extent of any fiscal impact resulting from a potential penalty is unknown.

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

CS by Rules on March 25, 2021:
The committee substitute provides that existing electric bicycle regulations affording an electric bicycle or electric bicycle operator the same rights, privileges, and duties of a bicycle or bicycle operator do not prevent a municipality, county, or agency of the state with jurisdiction over a beach or dune from restricting or prohibiting the operation of an electric bicycle on such beach or dune.

B. Amendments:

None.

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

[20] *See* Department of Highway Safety and Motor Vehicles Legislative Bill Analysis for 2020 SB 738 (on file in the Senate Transportation Committee).

336198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2021	.	
	.	
	.	
	.	

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.

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

THE FLORIDA SENATE
Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

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

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

March 10, 2021

The Honorable Chair Kathleen Passidomo
400 Senate Office Building
Tallahassee, FL 32399

Dear Chair Passidomo,

I would like to request that SB 738 Bicycle Operations Regulations be heard in the next Rules Committee meeting.

This bill will allow the use of a bicycle that was designed by the manufacturer, without a seat. This bill comes from a constituent who was given a traffic ticket for riding a stand up bicycle (elliptical bike) on the road, which according to state law, this is not allowed.

Thank you for your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

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

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Mar 21
Meeting Date

738
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name DIEGO ECHEVERRI

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

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:	SB 752
INTRODUCER:	Senator Gruters
SUBJECT:	Public Defender Duties
DATE:	March 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	**Favorable**
2.	Erickson	Jones	CJ	**Favorable**
3.	Ravelo	Phelps	RC	**Favorable**

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.

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:	CS/CS/SB 920
INTRODUCER:	Rules Committee; Environment and Natural Resources Committee; and Senator Bradley
SUBJECT:	Liability of Persons Providing Areas for Public Outdoor Recreational Purposes
DATE:	March 25, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	**Fav/CS**
2.	Ravelo	Cibula	JU	**Favorable**
3.	Schreiber	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 920 expands the circumstances in which a state agency may accept responsibility for any injury, loss, or damage that occurs on private property to members of the public. Under existing law, a state agency may accept this responsibility as part of an agreement with a private landowner which allows for public access to the owner's land for outdoor recreational purposes.

Under the bill, a state agency may agree to accept liability for scenarios where members of the public cross private land to access public lands for outdoor recreational purposes. This would include, for example, a state agency entering into an agreement to allow members of the public to cross through private property in order to enter a state park.

The bill creates an exception where an owner of an area used for outdoor recreational purposes may derive revenue from concessions or special events and retain liability protection if such revenue is used exclusively to maintain, manage, and improve the outdoor recreational area.

The bill takes effect July 1, 2021.

II. Present Situation:

Limitation of Liability for Persons Making Areas Available to the Public for Outdoor Recreational Purposes

Under general legal principles of premises liability, a property owner or occupier may be found negligent based on a duty to maintain the property in a reasonably safe condition or a duty to warn of dangerous conditions known to the owner or occupier that are not readily apparent.[1] Section 375.251, F.S., also known as the Florida Recreational Use Statute,[2] provides a limitation of liability to encourage persons to make land, water areas, and park areas available to the public for recreational purposes.[3] Under the statute, an owner or lessee who provides the public with an area[4] for outdoor recreational purposes[5] owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering the area of any hazardous conditions, structures, or activities on the area.[6] An owner or lessee who provides the public with an area for outdoor recreational purposes:

- Is not presumed to extend any assurance that the area is safe for any purpose;
- Does not incur any duty of care toward a person who goes on the area; or
- Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area.[7]

This limitation of liability applies only if no charge is made for entry to or use of the area for outdoor recreational purposes and no other revenue is derived from patronage of the area for outdoor recreational purposes.[8] Notwithstanding the inclusion of the term "public," an owner or lessee who makes available to any person an area primarily for the purposes of hunting, fishing, or wildlife viewing is entitled to the limitation of liability so long as the owner or lessee provides written notice of this provision to the person before or at the time of entry or posts notice of this provision conspicuously upon the area.[9]

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[1] *See Grimes v. Family Dollar Stores of Fla., Inc*., 194 So. 3d 424, 427 (Fla. Dist. Ct. App. 2016); *see Phillips v. Republic Fin. Corp*., 157 So. 3d 320, 326 (Fla. Dist. Ct. App. 2015)(noting the "crux of a cause of action for premises liability is not the ownership of the premises, but the negligence of the possessor in permitting licensees and invitees to come unwarned to an area where they could foreseeably be injured by a dangerous condition which is not readily apparent").

[2] *See Hurst v. United States by & through Dep't of the Agric. US Forest Serv.*, 782 F. App'x 978, 979 (11th Cir. 2019).

[3] Section 375.251(1), F.S.; *see* ss. 253.42(4)(c), 373.1395(5), 589.19(4)(e)1., and 773.05, F.S. Several sections contain cross-references to the limitation of liability in s. 375.251, F.S.

[4] Section 375.251(5)(a), F.S. As used in the section, "'area' includes land, water, and park areas."

[5] Section 375.251(5)(b), F.S. As used in the section, "'outdoor recreational purposes' includes, but is not limited to, hunting, fishing, wildlife viewing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites."

[6] Section 375.251(2)(a), F.S.; *see Abdin v. Fischer*, 374 So. 2d 1379, 1380-1381 (Fla. 1979)(holding that s. 375.251, F.S., is constitutional because, while it alters the standard of care owed, it does not deny access to the courts).

[7] Section 375.251(2)(a), F.S.; *see City of Pensacola v. Stamm*, 448 So. 2d 39, 41-42 (Fla. Dist. Ct. App. 1984)(holding that s. 375.251, F.S., does not relieve government entities of liability as government entities are already charged with making areas available for public recreational use); *see Hurst*, 782 F. App'x at 982-983 (explaining that s. 375.251, F.S., shields the federal government from tort liability under the Federal Tort Claims Act if s. 375.251, F.S., would shield a private individual under like circumstances).

[8] Section 375.251(2)(c), F.S.; *see Fernandez v. United States*, 766 F. App'x 787, 792-794 (11th Cir. 2019)(explaining that an owner or lessee is immune from liability so long as he makes no charges in the distinct area where the injury occurred).

[9] Section 375.251(2)(b), F.S.

Section 375.251(3), F.S., provides a limitation of liability for an owner of an area who enters into a written agreement concerning the area with the state for outdoor recreational purposes.[10] Where such agreements recognize that the state is responsible for personal injury, loss, or damage resulting in whole or in part from the state's use of the area under the terms of the agreement,[11] the owner owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering the area of any hazardous conditions, structures, or activities on the area.[12] An owner who has entered into such an agreement:

- Is not presumed to extend any assurance that the area is safe for any purpose;
- Does not incur any duty of care toward a person who goes on the area that is subject to the agreement; or
- Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area that is subject to the agreement.[13]

This limitation of liability applies to all persons going on the area subject to the agreement, including invitees, licensees, and trespassers.[14] The Legislature intended that the agreement should not result in compensation to the owner of the area above reimbursement of reasonable costs or expenses associated with the agreement, but an agreement, executed after July 1, 2012, that provides for compensation exceeding such costs and expenses does not subject the owner or the state to liability.[15]

Section 375.251, F.S., does not relieve any person of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property.[16] The section does not create or increase the liability of any person.[17]

III. Effect of Proposed Changes:

Section 1 amends s. 375.251, F.S., which limits the liability of persons who make areas available to the public for outdoor recreational purposes. The bill expands the section's definition of "outdoor recreational purposes" to include "traversing or crossing for the purpose of ingress and egress to and from, and access to and from, public lands or lands owned or leased by a state agency which are used for outdoor recreational purposes." This expressly applies the section's limitation of liability to include entering and exiting public lands, or lands owned or leased by a state agency, used for outdoor recreational purposes.

The bill also creates a definition for "state agency" for s. 375.251, F.S., defining it as "the state or any governmental or public entity created by law." The bill replaces the undefined term "state" with the defined term "state agency" in s. 375.251(3), F.S., broadening and clarifying the government entities to which that subsection applies.

[10] *See* ch. 2012-203, Laws of Fla.
[11] Section 768.28, F.S. The responsibility of the state recognized by the agreements described in s. 375.251(3), F.S., is subject to the limitations and conditions specified in the statutory waiver of sovereign immunity for liability for torts.
[12] Section 375.251(3)(a), F.S.
[13] *Id*.
[14] Section 375.251(3)(b), F.S.
[15] Section 375.251(3)(c), F.S. This paragraph applies only to agreements executed after July 1, 2012.
[16] Section 375.251(4), F.S.
[17] *Id*.

The bill creates an exception where an owner of an area used for outdoor recreational purposes may derive revenue from concessions or special events and retain the liability protection provided by s. 375.251(2), F.S., if such revenue is used exclusively to maintain, manage, and improve the outdoor recreational area.

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:

CS/CS/SB 920 expands liability protections to include "traversing or crossing for the purpose of ingress and egress to and from, and access to and from, public lands or lands owned or leased by a state agency which are used for outdoor recreational purposes." This additional liability protection may encourage private property owners to make areas available to the public for outdoor recreational purposes.

The bill creates an exception where an owner of an area used for outdoor recreational purposes may derive revenue from concessions or special events and retain liability protection if such revenue is used exclusively to maintain, manage, and improve the outdoor recreational area. This may result in an indeterminate, positive fiscal impact on private property owners that derive such revenue and retain the liability protection.

C. Government Sector Impact:

Broadening and clarifying the definition of "state agency" to include "the state or any governmental or public entity created by law" may allow previously ineligible government entities to engage in written agreements with private property owners who make areas available to the public for outdoor recreational purposes. For example, the new definition may include The Legislature and Florida public universities.

Because the bill allows the state to accept liability for injury, loss, or damages suffered by members of the public on private land, the state will be the defendant in any resulting premises liability lawsuits. However, the state's liability is subject to its waiver of sovereign immunity under s. 768.28, F.S. That statute generally limits the collectability of damages by any one person to $200,000 and to $300,000 per incident, regardless of the number of claimants. The payment of additional amounts may be approved by the Legislature in a claim bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 375.251 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 Rules on March 25, 2021:
The CS/CS creates an exception where an owner of an area used for outdoor recreational purposes may derive revenue from concessions or special events and retain the liability protection provided by s. 375.251(2), F.S., if such revenue is used exclusively to maintain, manage, and improve the outdoor recreational area.

CS by Environment and Natural Resources on February 15, 2021:
The CS amends the title to reflect that the expanded definition of "outdoor recreational purposes" in the bill applies broadly throughout s. 375.251, F.S., and not only to the subsection on written agreements.

B. Amendments:

None.

887138

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/25/2021	.	
	.	
	.	
	.	

The Committee on Rules (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 12 - 49
and insert:
Section 1. Paragraph (c) of subsection (2) and subsections (3) and (5) of section 375.251, Florida Statutes, are amended to read:
375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—
(2)

887138

(c) The Legislature recognizes that an area offered for outdoor recreational purposes may be subject to multiple uses. The limitation of liability extended to an owner or lessee under this subsection applies only if no charge is made for entry to or use of the area for outdoor recreational purposes and no other revenue is derived from patronage of the area for outdoor recreational purposes, other than revenue from concessions or special events which is used to maintain, manage, and improve the recreational area.

(3)(a) An owner of an area who enters into a written agreement concerning the area with a ~~the~~ state agency for outdoor recreational purposes, where such agreement recognizes that the state agency is responsible for personal injury, loss, or damage resulting in whole or in part from the state agency's ~~state's~~ use of the area under the terms of the agreement subject to the limitations and conditions specified in s. 768.28, owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering or going on the area of any hazardous conditions, structures, or activities thereon. An owner who enters into a written agreement concerning the area with a ~~the~~ state agency for outdoor recreational purposes:

1. Is not presumed to extend any assurance that the area is safe for any purpose;

2. Does not incur any duty of care toward a person who goes on the area that is subject to the agreement; or

3. Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area that is subject to the agreement.

887138

(b) This subsection applies to all persons going on the area that is subject to the agreement, including invitees, licensees, and trespassers.

(c) It is the intent of this subsection that an agreement entered into pursuant to this subsection should not result in compensation to the owner of the area above reimbursement of reasonable costs or expenses associated with the agreement. An agreement that provides for such does not subject the owner or the state agency to liability even if the compensation exceeds those costs or expenses. This paragraph applies only to agreements executed after July 1, 2012.

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

(a) "Area" includes land, water, and park areas, including any privately funded park open to the public without an admission fee or charge for entry during normal business hours.

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

And the title is amended as follows:

Delete line 4

and insert:

amending s. 375.251, F.S.; revising legislative intent regarding the applicability of limitation on liability; expanding the applicability

755520

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2021	.	
	.	
	.	
	.	

The Committee on Rules (Bradley) recommended the following:

Senate Substitute for Amendment (887138) (with title amendment)

Delete lines 12 - 16
and insert:
Section 1. Paragraph (c) of subsection (2) and subsections (3) and (5) of section 375.251, Florida Statutes, are amended to read:
375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—

755520

(2)

(c) The Legislature recognizes that an area offered for outdoor recreational purposes may be subject to multiple uses. The limitation of liability extended to an owner or lessee under this subsection applies only if no charge is made for entry to or use of the area for outdoor recreational purposes and no other revenue is derived from patronage of the area for outdoor recreational purposes. An owner may derive revenue from concessions or special events but will only retain liability protection under this subsection if such revenue is used exclusively to maintain, manage, and improve the outdoor recreational area.

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

And the title is amended as follows:

Delete line 4

and insert:

amending s. 375.251, F.S.; providing that owners may not be subject to liability if they are generating certain revenues and those revenues are used exclusively for specified purposes; expanding the applicability of the limitation of liability for

By the Committee on Environment and Natural Resources; and
Senator Bradley

592-02134-21 2021920c1

A bill to be entitled

An act relating to liability of persons providing areas for public outdoor recreational purposes; amending s. 375.251, F.S.; expanding the applicability of the limitation of liability for persons who provide areas to the public for outdoor recreational purposes without charge; revising and defining terms; providing an effective date.

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

Section 1. Subsections (3) and (5) of section 375.251, Florida Statutes, are amended to read:

375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—

(3)(a) An owner of an area who enters into a written agreement concerning the area with a ~~the~~ state agency for outdoor recreational purposes, where such agreement recognizes that the state agency is responsible for personal injury, loss, or damage resulting in whole or in part from the state agency's ~~state's~~ use of the area under the terms of the agreement subject to the limitations and conditions specified in s. 768.28, owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering or going on the area of any hazardous conditions, structures, or activities thereon. An owner who enters into a written agreement concerning the area with a ~~the~~ state agency for outdoor recreational purposes:

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

592-02134-21 2021920c1

1. Is not presumed to extend any assurance that the area is safe for any purpose;

2. Does not incur any duty of care toward a person who goes on the area that is subject to the agreement; or

3. Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area that is subject to the agreement.

(b) This subsection applies to all persons going on the area that is subject to the agreement, including invitees, licensees, and trespassers.

(c) It is the intent of this subsection that an agreement entered into pursuant to this subsection should not result in compensation to the owner of the area above reimbursement of reasonable costs or expenses associated with the agreement. An agreement that provides for such does not subject the owner or the state agency to liability even if the compensation exceeds those costs or expenses. This paragraph applies only to agreements executed after July 1, 2012.

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

(a) "Area" includes land, water, and park areas.

(b) "Outdoor recreational purposes" includes, but is not limited to, hunting, fishing, wildlife viewing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, ~~and~~ visiting historical, archaeological, scenic, or scientific sites, and traversing or crossing for the purpose of ingress and egress to and from, and access to and from, public lands or lands owned or leased by a state agency which are used for outdoor recreational purposes.

(c) "State agency" means the state or any governmental or

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

public entity created by law.

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

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

THE FLORIDA SENATE
Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 3, 2021

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 920 be placed on the committee's agenda at your earliest convenience. This bill expands an existing statutory liability limitation relating to public lands and waterways to persons who make areas of their land available for public access to public recreational lands. The bill will help to ensure that private landowners continue to enter into agreements with state agencies to allow access to public lands that might be otherwise inaccessible.

Thank you for your consideration of this request. Please let me know if I can provide additional information concerning this bill,

Sincerely,

Jennifer Bradley

cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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 922
INTRODUCER:	Senator Burgess
SUBJECT:	Veterans' Preference in Employment
DATE:	March 23, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	**Favorable**
2.	Brown	Phelps	RC	**Favorable**

I. Summary:

SB 922 expands the benefit of a veterans preference in employment by authorizing a state or a political subdivision of the state to waive a postsecondary educational requirement for a position of employment. The education waiver applies to:

- A current member of a reserve component of the United States Armed Forces (U.S.A.F.);
- A current member of the Florida National Guard; or
- An honorably-discharged veteran.

Current law provides that certain positions are exempt from the requirement of veterans preference. As is the case for the other benefits, the education waiver is not available if the person is applying for a position designated as exempt. This bill, however, narrows the exemptions. A personal secretary of a public officer, a head of a department, and a position that requires licensure as a physician, osteopathic physician, or a chiropractic physician will now not be exempt from preference and priority requirements.

The bill also increases points used for appointment and retention determinations. For any given position, points are added in assessing an applicant for employment as follows:

- From 15 to 20 points for an honorably-discharged veteran who has served on active duty and has a service-connected, compensable disability; a spouse of a person who has a total, permanent, service-connected disability and cannot qualify for employment; or to a spouse of a person missing in action, captured, or forcibly detained or interned by a foreign government or power;
- From 10 to 15 points for a person who is an honorably-discharged veteran and has served at least 1 day during wartime; an unremarried widow or widower of a veteran who died from a service-connected disability; or a mother, father, legal guardian, or unremarried widow or widower of a servicemember of the U.S.A.F. who died in the line of duty under verified combat-related conditions;
- From 5 to 10 points for a person who is an honorably-discharged veteran or a current member of the reserves of the U.S.A.F. or the Florida National Guard.

The bill requires, rather than authorizes under current law, a political subdivision of the state to develop a written veterans' recruitment plan.

The bill takes effect July 1, 2021.

II. Present Situation:

Veterans Preference, Overall

Designated servicemembers and honorably-discharged veterans or their family members receive a preference and priority in hiring for state positions. To notify potential applicants of the benefit, agencies and political subdivisions of the state must include a statement in a job announcement providing that certain servicemembers and veterans and their spouses and family members have preference and priority and are encouraged to apply.[1]

Applicability

Preference in appointment is available to:

- An honorably-discharged, disabled veteran who has served on active duty in a branch of the United States Armed Forces and has a compensable, service-connected disability, is receiving compensation, disability retirement benefits, or a military pension;
- The spouse of either a permanently, totally, service-connected disabled person who does not qualify for employment or of a person missing in action, captured in the line of duty by a hostile force, or forcibly detained or interned in the line of duty by a foreign government or power;
- A wartime veteran, which is an honorably-discharged person who served in the active military, naval, or air service for at least 1 day during a wartime period, or an honorably-discharged veteran;
- The remarried widow or widower of a veteran who died of a service-connected disability;
- The mother, father, legal guardian, or unremarried widow or widower of a member of the U.S.A.F. who died in the line of duty under verified combat-related conditions;
- A current member of a reserve component of the USAF or the Florida National Guard.[2]

Exemptions from Preference

Positions that are exempt from preference and priority are:

- Positions that are exempt from the state Career Service System; however, positions under the University Support Personnel System of the State University System and all Career Service System positions under the Florida College System and the School for the Deaf and the Blind, or their equivalent at these institutions are not exempt;
- Positions in political subdivisions of the state filled by officers elected by popular vote or persons appointed to fill vacancies in these offices and the personal secretary of each officer;
- Positions for members of boards and commissions;
- Positions filled on a temporary basis without benefits;

[1] Section 295.065, F.S.
[2] Section 295.07(1), F.S.

- Positions for heads of departments;
- Positions that require licensure as a physician, osteopathic physician, or chiropractic physician; and
- Positions that require Florida Bar membership.[3]

Process of Awarding Preference

Preference by Point System for Examination

If an examination is part of the hiring process, a point system applies if the applicant is eligible for a veterans' preference. For any given position, if the applicant has received a qualifying score on the examination, points are added in assessing an applicant for employment as follows:

- 15 points for an honorably-discharged veteran who has served on active duty and has a service-connected, compensable disability; a spouse of a person who has a total, permanent, service-connected disability and cannot qualify for employment; or a spouse of a person missing in action, captured, or forcibly detained or interned by a foreign government or power;
- 10 points for a person who is an honorably-discharged veteran and has served at least 1 day during wartime; an unremarried widow or widower of a veteran who died from a service-connected disability; or a mother, father, legal guardian, or unremarried widow or widower of a servicemember of the U.S.A.F. who died in the line of duty under verified combat-related conditions;
- 5 points for a person who is an honorably-discharged veteran or a current member of the reserves of the U.S.A.F. or the Florida National Guard.[4]

Preference without Examination

First preference in appointment, employment, and retention is given to:

- An honorably-discharged veteran who has served on active duty and has a service-connected, compensable disability;
- A spouse of a person who has a total, permanent, service-connected disability and cannot qualify for employment; or
- A spouse of a person missing in action, captured, or forcibly detained or interned by a foreign government or power.[5]

Second preference [6] is given to:

- A veteran who has served at least 1 day during wartime;
- An unremarried widow or widower of a veteran who died of a service-connected disability;
- A parent, legal guardian, or unremarried widow or widower of a member of the U.S.A.F. who died in the line of duty under verified combat-related conditions;
- An honorably-discharged veteran; and

[3] Section 295.07(4), F.S.
[4] Section 295.08, F.S.
[5] Section 295.085, F.S.
[6] Second preference means that for any given position, employment is offered to a person who qualifies under second preference if a person does not meet the qualification for first preference and for the position. Email correspondence between Christian Cochran and Victoria Jarrett, Florida Dep't of Veterans' Affairs (Feb. 19, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

- A current member of the reserves of the U.S.A.F. or the Florida National Guard.[7]

Requirements on Agencies

Each state agency must, and each political subdivision may, develop and implement a written veterans' recruitment plan to determine annual goals for maximizing the use of veterans in the agency or political subdivision workforce.[8]

Additionally, the Department of Management Services must collect and annually report on its website certain statistical data received from state agencies. The data required to be kept and reported is on the number of people who:
- Have claimed a veterans' preference;
- Have been hired through veterans' preference; and
- Have been hired through a veterans' recruitment plan.[9]

III. Effect of Proposed Changes:

SB 922 expands the benefit of a veterans preference in employment by authorizing a state or a political subdivision of the state to waive a postsecondary educational requirement for a position of employment. If an applicant is otherwise qualified, the education waiver applies if the applicant is:
- A current member of a reserve component of the United States Armed Forces;
- A current member of the Florida National Guard; or
- An honorably-discharged veteran.

Current law provides that certain positions are exempt from the requirement of veterans preference. As is the case for the other benefits, the education waiver is not available if the person is applying for a position designated as exempt. This bill, however, narrows the exemptions. In so doing, a personal secretary of a public officer, a head of a department, and a position that requires licensure as a physician, osteopathic physician, or a chiropractic physician will now not be exempt from preference and priority requirements. The import of removing the exemption for a licensed medical practitioner is unclear as presumably specific educational attainment is required for licensure.

The bill also increases the points used for appointment and retention determinations. For any given position, points are added in assessing an applicant for employment as follows:
- From 15 to 20 points for an honorably-discharged veteran who has served on active duty and has a service-connected, compensable disability; a spouse of a person who has a total, permanent, service-connected disability and cannot qualify for employment; or a spouse of a person missing in action, captured, or forcibly detained or interned by a foreign government or power;
- From 10 to 15 points for a person who is an honorably-discharged veteran and has served at least 1 day during wartime; an unremarried widow or widower of a veteran who died from a

[7] *Id*.
[8] Section 295.07(5)(a), F.S.
[9] Section 295.07(5)(b), F.S.

service-connected disability; or a mother, father, legal guardian, or unremarried widow or widower of a servicemember of the U.S.A.F. who died in the line of duty under verified combat-related conditions;
- From 5 to 10 points for a person who is an honorably-discharged veteran or a current member of the reserves of the U.S.A.F. or the Florida National Guard.

Current law requires a state agency to develop a veterans' recruitment plan. The bill additionally requires a political subdivision of the state to implement a veterans' recruitment plan.

The bill makes conforming changes to statutory cross-references.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

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:

More state job positions may be available to a person qualifying under a veterans' preference for employment, both due to the educational waiver and increase in points

awarded by examination provided in the bill. Additionally, fewer types of positions are made exempt.

C. Government Sector Impact:

A political subdivision of the state must now develop a written veterans' recruitment plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 295.065, 295.07, 295.08, 295.085, 295.09, and 1002.36.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Burgess

20-00591C-21 2021922__

A bill to be entitled

An act relating to veterans' preference in employment; amending s. 295.065, F.S.; revising legislative intent to conform to changes made by the act; amending s. 295.07, F.S.; authorizing the state and its political subdivisions to waive certain postsecondary educational requirements for employment for servicemembers and veterans who meet specified criteria; revising the list of positions that are exempt from veterans' preference requirements; requiring, rather than authorizing, each political subdivision to develop and implement a veterans' recruitment plan for specified purposes; amending s. 295.08, F.S.; modifying point preferences given to veterans and their family members when a numerically based selection process is used for hiring; amending ss. 295.085, 295.09, and 1002.36, F.S.; conforming provisions and cross-references to changes made by the act; providing an effective date.

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

Section 1. Section 295.065, Florida Statutes, is amended to read:

295.065 Legislative intent.—It is the intent of the Legislature to provide preference, ~~and~~ priority, and waivers for certain educational requirements in the hiring practices of this state and its political subdivisions as set forth in this chapter. All written job announcements and audio and video

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

20-00591C-21 2021922__

advertisements used by employing agencies of the state and its political subdivisions must include a notice stating that certain servicemembers and veterans, and the spouses and family members of such ~~the~~ servicemembers and veterans, receive preference and priority, and that certain servicemembers may be eligible to receive waivers for postsecondary educational requirements, in employment by the state and its political subdivisions and are encouraged to apply for the positions being filled.

Section 2. Section 295.07, Florida Statutes, is amended to read:

295.07 Preference in appointment and retention.—

(1) The state and its political subdivisions shall give preference in appointment and retention in positions of employment to:

(a) Those disabled veterans:

1. Who have served on active duty in any branch of the United States Armed Forces, have received an honorable discharge, and have established the present existence of a service-connected disability that is compensable under public laws administered by the United States Department of Veterans Affairs; or

2. Who are receiving compensation, disability retirement benefits, or pension pursuant to ~~by reason of~~ public laws administered by the United States Department of Veterans Affairs and the United States Department of Defense.

(b) The spouse of a person who has a total disability, permanent in nature, resulting from a service-connected disability and who, because of this disability, cannot qualify

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

for employment, and the spouse of a person missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(c) A wartime veteran as defined in s. 1.01(14), who has served at least 1 day during a wartime period. Active duty for training may not be allowed for eligibility under this paragraph.

(d) The unremarried widow or widower of a veteran who died of a service-connected disability.

(e) The mother, father, legal guardian, or unremarried widow or widower of a member of the United States Armed Forces who died in the line of duty under combat-related conditions, as verified by the United States Department of Defense.

(f) A veteran as defined in s. 1.01(14). Active duty for training may not be allowed for eligibility under this paragraph.

(g) A current member of any reserve component of the United States Armed Forces or the Florida National Guard.

(2) The state and its political subdivisions may waive a postsecondary educational requirement for a position of employment, other than those positions made exempt under subsection (5), for a current member of any reserve component of the United States Armed Forces or the Florida National Guard or a veteran who has been honorably discharged if the person is otherwise qualified for the position.

(3) The Department of Veterans' Affairs shall adopt rules to ensure that veterans are given special consideration in the employing agency's selection and retention processes. The rules

must include the award of point values as articulated in s. 295.08, if applicable, or, where point values are not relevant, must include procedures to ensure that veterans are given special consideration at each step of the employment selection process, unless the sponsoring governmental entity is a party to a collective bargaining agreement, in which case the collective bargaining agreement must comply within 90 days following ratification of a successor collective bargaining agreement or extension of any existing collective bargaining agreement.

(4) ~~(3)~~ Preference in employment and retention, or educational waivers, may be given only to eligible persons who are described in subsection (1) or subsection (2).

(5) ~~(4)~~ The following positions are exempt from this section:

(a) Those positions that are exempt from the state Career Service System under s. 110.205(2); however, all positions under the University Support Personnel System of the State University System as well as all Career Service System positions under the Florida College System and the School for the Deaf and the Blind, or the equivalent of such positions at state universities, Florida College System institutions, or the School for the Deaf and the Blind, are not exempt ~~included~~.

(b) Positions in political subdivisions ~~of the state~~ which are filled by officers elected by popular vote or persons appointed to fill vacancies in such offices ~~and the personal secretary of each such officer~~, members of boards and commissions, persons employed on a temporary basis without benefits, ~~heads of departments, positions that require licensure as a physician, licensure as an osteopathic physician, licensure~~

~~as a chiropractic physician~~, and positions that require that the employee be a member of The Florida Bar.

(6)(a) ~~(5)(a)~~ Each state agency and political subdivision shall~~, and each political subdivision of the state may,~~ develop and implement a written veterans' recruitment plan that establishes annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce. Each veterans' recruitment plan must be designed to meet the established goals.

(b) The Department of Management Services shall collect statistical data from each state agency on the number of persons who claim veterans' preference, the number of persons who are hired through veterans' preference, and the number of persons who are hired as a result of the veterans' recruitment plan. The department shall annually update the statistical data required by this paragraph on its website and include such statistical data in its annual workforce report.

(c) For purposes of this subsection, the veterans' recruitment plan applies to the eligible persons described in subsections ~~subsection~~ (1) and (2).

Section 3. Section 295.08, Florida Statutes, is amended to read:

295.08 Positions for which a numerically based selection process is used.—For positions for which an examination is used to determine the qualifications for entrance into employment with the state or any of its political subdivisions ~~in the state~~, 20 ~~15~~ points must ~~shall~~ be added to the earned ratings of a person included under s. 295.07(1)(a) or (b), 15 ~~10~~ points must ~~shall~~ be added to the earned ratings of a person included

under s. 295.07(1)(c), (d), or (e), and 10 ~~5~~ points must ~~shall~~ be added to the earned rating of a person included under s. 295.07(1)(f) or (g), if the person has obtained a qualifying score on the examination for the position. The names of persons eligible for preference must ~~shall~~ be entered on an appropriate register or list in accordance with their respective augmented ratings. However, except for classes of positions with Federal Government designations of professional or technician, the names of all persons who are qualified to receive a 20-point ~~15-point~~ preference whose service-connected disabilities have been rated by the United States Department of Veterans Affairs or its predecessor or the United States Department of Defense to be 30 percent or more must ~~shall~~ be placed at the top of the appropriate register or employment list, in accordance with their respective augmented ratings. The respective augmented rating is the examination score or evaluated score in addition to the applicable veteran's preference points.

Section 4. Section 295.085, Florida Statutes, is amended to read:

295.085 Positions for which a numerically based selection process is not used.—In all positions in which the appointment or employment of persons is not subject to a written examination, not including ~~with the exception of~~ positions that are exempt under s. 295.07(5) ~~s. 295.07(4)~~, first preference in appointment, employment, and retention must ~~shall~~ be given by the state and political subdivisions in the state to a person included under s. 295.07(1)(a) or (b), and second preference must ~~shall~~ be given to a person included under s. 295.07(1)(c), (d), (e), (f), or (g), who possess the minimum qualifications

necessary to discharge the duties of the position involved.

Section 5. Paragraph (a) of subsection (1) of section 295.09, Florida Statutes, is amended to read:

295.09 Reinstatement or reemployment; promotion preference.—

(1)(a) When an employee of the state or any of its political subdivisions employed in a position subject or not subject to a career service system or other merit-type system, not including ~~with the exception of those~~ positions that ~~which~~ are exempt pursuant to s. 295.07(5) ~~s. 295.07(4)~~, has served in the Armed Forces of the United States and is discharged or separated therefrom with an honorable discharge, the state or its political subdivision shall reemploy or reinstate such person to the same position that he or she held before ~~prior to~~ such service in the armed forces, or to an equivalent position, provided that such person returns to the position within 1 year after ~~of~~ his or her date of separation or, in cases of extended active duty, within 1 year after ~~of~~ the date of discharge or separation subsequent to the extension. Such person must ~~shall~~ also be awarded preference in promotion and ~~shall~~ be promoted ahead of all others who are as well qualified or less qualified for the position. When an examination for promotion is used ~~utilized~~, such person must ~~shall~~ be awarded preference points, as provided in s. 295.08, and ~~shall~~ be promoted ahead of all those who appear in an equal or lesser position on the promotional register, provided that he or she first successfully passes the examination for the promotional position.

Section 6. Paragraph (f) of subsection (4) of section 1002.36, Florida Statutes, is amended to read:

1002.36 Florida School for the Deaf and the Blind.—

(4) BOARD OF TRUSTEES.—

(f) The board of trustees shall:

1. Prepare and submit legislative budget requests for operations and fixed capital outlay, in accordance with chapter 216 and ss. 1011.56 and 1013.60, to the Department of Education for review and approval. The department must analyze the amount requested for fixed capital outlay to determine if the request is consistent with the school's campus master plan, educational plant survey, and facilities master plan. Projections of facility space needs may exceed the norm space and occupant design criteria established in the State Requirements for Educational Facilities.

2. Approve and administer an annual operating budget in accordance with ss. 1011.56 and 1011.57.

3. Require all funds received other than gifts, donations, bequests, funds raised by or belonging to student clubs or student organizations, and funds held for specific students or in accounts for individual students to be deposited in the State Treasury and expended as authorized in the General Appropriations Act.

4. Require all purchases to be in accordance with the provisions of chapter 287 except for purchases made with funds received as gifts, donations, or bequests; funds raised by or belonging to student clubs or student organizations; or funds held for specific students or in accounts for individual students.

5. Administer and maintain personnel programs for all employees of the board of trustees and the Florida School for

the Deaf and the Blind who shall be state employees, including the personnel classification and pay plan established in accordance with ss. 110.205(2)(d) and 216.251(2)(a)2. for academic and academic administrative personnel, the provisions of chapter 110, and the provisions of law that grant authority to the Department of Management Services over such programs for state employees.

6. Give preference in appointment and retention in positions of employment as provided within s. 295.07(1) and (2).

7. Ensure that the Florida School for the Deaf and the Blind complies with s. 1013.351 concerning the coordination of planning between the Florida School for the Deaf and the Blind and local governing bodies.

8. Ensure that the Florida School for the Deaf and the Blind complies with s. 112.061 concerning per diem and travel expenses of public officers, employees, and authorized persons with respect to all funds other than funds received as gifts, donations, or bequests; funds raised by or belonging to student clubs or student organizations; or funds held for specific students or in accounts for individual students.

9. Adopt a master plan which specifies the mission and objectives of the Florida School for the Deaf and the Blind. The plan shall include, but not be limited to, procedures for systematically measuring the school's progress toward meeting its objectives, analyzing changes in the student population, and modifying school programs and services to respond to such changes. The plan shall be for a period of 5 years and shall be reviewed for needed modifications every 2 years. The board of trustees shall submit the initial plan and subsequent

modifications to the Speaker of the House of Representatives and the President of the Senate.

10. Designate a portion of the school as "The Verle Allyn Pope Complex for the Deaf," in tribute to the late Senator Verle Allyn Pope.

Section 7. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 9, 2021

I respectfully request that **Senate Bill #922**, relating to Veterans' Preference in Employment, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

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 952
INTRODUCER:	Senator Burgess
SUBJECT:	Water Management Districts
DATE:	March 23, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	**Favorable**
2.	Ponder	McVaney	GO	**Favorable**
3.	Schreiber	Phelps	RC	**Favorable**

I. Summary:

SB 952 authorizes a water management district to purchase commodities and services from the contracts of other specified entities, when such contracts have been procured pursuant to certain processes and otherwise meet the procurement requirements of the water management district. The bill authorizes a water management district to purchase from the contracts of: special districts, municipalities, counties, or other political subdivisions; educational institutions; other states; the Federal Government; nonprofit entities; or purchasing cooperatives. The authorization does not apply to purchasing services in the fields of architecture, professional engineering, landscape architecture, or registered surveying and mapping.

A water management district may avoid costs associated with competitive procurement process if the district uses other contracts to purchase commodities and services.

The bill takes effect July 1, 2021.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.[1] DMS establishes purchasing agreements and procures state term contracts for commodities and contractual services, and establishes uniform procurement policies, rules, and procedures.[2] DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

[1] *See* ss. 287.032 and 287.042, F.S.
[2] *Id*.; *see* Fla. Admin. Code ch. 60A-1.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These methods include the following:

- Single source contracts,[3] used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,[4] used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,[5] which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,[6] which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

For procurement of commodities or contractual services in excess of $35,000, agencies must use a competitive solicitation process.[7] However, specified contractual services and commodities are not subject to competitive solicitation requirements.[8]

Chapter 287 defines "agency" to mean any unit of the executive branch of state government.[9] This definition does not apply to water management districts or local governments, so generally these entities are not subject to the requirements of the chapter. In general, each water management district[10] maintains its own processes and requirements for procurement.[11]

Consultants' Competitive Negotiation Act

While the requirements of ch. 287, F.S., apply generally to state agencies only, s. 287.055, F.S., known as the Consultants' Competitive Negotiation Act, applies to state agencies as well as local

[3] Section 287.057(3)(c), F.S.
[4] Section 287.057(1)(a), F.S.
[5] Section 287.057(1)(b), F.S.
[6] Section 287.057(1)(c), F.S.
[7] Section 287.057(1), F.S.
[8] Section 287.057(3)(e), F.S.
[9] Section 287.012(1), F.S. The term "agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges."
[10] *See* 373.019(23), F.S. "Water management districts" are defined as "any flood control, resource management, or water management district operating under the authority of this chapter."
[11] *See* SFWMD, *Procurement*, https://www.sfwmd.gov/doing-business-with-us/procurement (last visited Feb. 9, 2021); *see* NWFWMD, *District Procurement*, https://www.nwfwater.com/Business-Finance/District-Procurement (last visited Feb. 9, 2021); *see* SJRWMD, *Procurement*, https://www.sjrwmd.com/finance/procurement/ (last visited Feb. 9, 2021); *see* SRWMD, *Bids & Contracts*, https://www.mysuwanneeriver.com/26/Bids-Contracts (last visited Feb. 9, 2021); *see* SWFWMD, *Procurement and Contracts Administration*, https://www.swfwmd.state.fl.us/business/finance/procurement-and-contracts-administration (last visited Feb. 9, 2021).

governments and water management districts.[12] The Act requires these entities to follow specified procedures when purchasing professional services involving the following fields:

- Architecture;
- Professional Engineering;
- Landscape Architecture; or
- Registered Surveying and Mapping.[13]

Purchasing from Other Entities' Contracts

Chapter 287, F.S., and rules pursuant thereto, authorize state agencies to purchase commodities and services from the contracts of other entities, such as the federal government and other states.[14] Section 287.056, F.S., provides that state agencies must, and "eligible users" may, purchase commodities and contractual services from purchasing agreements established and state term contracts procured by DMS.[15] The definition of eligible user includes water management districts.[16] Thus, a water management district is authorized to purchase commodities and services from state agency contracts.

In 2009, the Legislature created s. 189.053, F.S., to authorize special districts to purchase commodities and contractual services, other than services the acquisition of which is governed by 287.055, F.S., from the purchasing agreements of other special districts, municipalities, or counties which have been procured pursuant to competitive bid, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and which are otherwise in compliance with general law if the purchasing agreement of the other special district, municipality, or county was procured by a process that would have met the procurement requirements of the purchasing special district.[17] The definition of "special districts" includes water management districts for these purposes.[18] Thus, a water management district is authorized

[12] Section 287.055(2)(b), F.S. The term "agency" is defined as "the state, a state agency, a municipality, a political subdivision, a school district, or a school board."
[13] Section 287.055, F.S.
[14] *See* s. 287.042(16), F.S.; *see* Fla. Admin. Code R. 60A-1.045(5). Alternative purchasing methods require approval from DMS.
[15] *See* DMS, *State Contracts and Agreements*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements (last visited Feb. 10, 2021).
[16] Section 287.012(11), F.S. "Eligible user" is defined in statute as "any person or entity authorized by the department pursuant to rule to purchase from state term contracts or to use the online procurement system"; Fla. Admin. Code R. 60A-1.001(2). "Eligible user" is defined in rule to include "(e) Political subdivisions, including counties, cities, towns, villages and districts, as described by Section 1.01(8), F.S., and instrumentalities thereof"; *see* s. 1.01(8), F.S. Providing that, in construing the statutes, the words "political subdivision" include "counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state."
[17] Section 189.053, F.S. This process is referred to as "piggybacking." The National Institute of Government Purchasing defines "piggybacking" as "a form of intergovernmental cooperative purchasing in which an entity will be extended the same pricing and terms of a contract entered into by another entity. Generally the originating entity will competitively award a contract that will include language allowing for other entities to utilize the contract, which may be to their advantage in terms of pricing, thereby gaining economies of scale that they would otherwise not receive if they competed on their own." *See Public Procurement Practice, Use of Cooperative Contracts for Public Procurement*, https://www.nigp.org/resource/global-best-practices/Use%2520of%2520Cooperative%2520Contracts%2520for%2520Public%2520Procurement%2520Best%2520Practice.pdf?dl=true (last visited February 24, 2022).
[18] Section 189.012(6), (7), F.S.

to purchase commodities and services from the contracts of other special districts, municipalities, and counties, pursuant to the specified standards.

III. Effect of Proposed Changes:

Section 1 creates s. 373.6075, F.S., to authorize a water management district to purchase commodities and contractual services from the contracts that have been procured by other entities pursuant to competitive bids, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and that are otherwise in compliance with general law if the contract of the procuring entity was procured by a process that would have met the procurement requirements of the purchasing water management district. The bill authorizes water management districts, for contracts procured in the manner specified in the bill, to purchase from the contracts of the following entities:

- Special districts, municipalities, counties, or other political subdivisions;
- Educational institutions;
- Other states;
- The Federal Government;
- Nonprofit entities; or
- Purchasing cooperatives.

The grant of authority to water management districts to purchase from the contracts of other entities does not apply to professional services within the scope of practice of, or performed in connection with the professional employment or practice of, the following fields:

- Architecture;
- Professional Engineering;
- Landscape Architecture; or
- Registered Surveying and Mapping.

According to email correspondence from January 2021, the Southwest Florida Water Management District believes that the general language of the bill clarifies purchasing language for water management districts and puts them on equal footing with other public entities such as state agencies, counties, and municipalities that have broader "piggyback" authority.[19]

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.

[19] *Email from Cara Martin, Southwest Florida Water Management District Government and Community Affairs Office Chief* (Jan. 14, 2021)(on file with the Florida Senate Environment and Natural Resources Committee). The email is referring to HB 169, which contains essentially the same substantive language as SB 952.

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:

Indeterminate.

C. Government Sector Impact:

The bill may have an indeterminate, positive fiscal impact on water management districts by permitting the districts to purchase commodities and services from the contracts of other entities, potentially resulting in avoiding costs associated with the procurement process and potentially lower prices or better purchasing options. The Southwest Florida Water Management District has stated that the bill will result in efficiencies both in terms of the procurement process and cost savings.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 373.6075 of the Florida Statutes.

[20] *Id*.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Burgess

20-00706-21 2021952__

A bill to be entitled

An act relating to water management districts; creating s. 373.6075, F.S.; authorizing water management districts to purchase commodities and contractual services from the contracts of other specified entities under certain circumstances; providing an effective date.

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

Section 1. Section 373.6075, Florida Statutes, is created to read:

373.6075 Water management district purchases from contracts of other entities.—A water management district may purchase commodities and contractual services, other than services the acquisition of which is governed by s. 287.055, from the contracts of special districts, municipalities, counties, or other political subdivisions; educational institutions; other states; the Federal Government; nonprofit entities; or purchasing cooperatives, which have been procured pursuant to competitive bids, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and which are otherwise in compliance with general law if the contract of the procuring entity was procured by a process that would have met the procurement requirements of the purchasing water management district.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 12, 2021

I respectfully request that **Senate Bill #952**, relating to Water Management Districts, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

SB #952 clarifies existing law to allow water management districts to contract with other special districts and political subdivisions during the procurement process. This will save taxpayer dollars by allowing water management districts to access bulk pricing.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

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 1040
INTRODUCER:	Appropriations Committee; Governmental Oversight and Accountability Committee; and Senator Brodeur
SUBJECT:	Duties of the Attorney General
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	**Fav/CS**
2.	Dale	Sadberry	AP	**Fav/CS**
3.	Candelaria	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1040 repeals several functions of the Department of Legal Affairs (DLA) and the Attorney General (AG) and transfers several functions to other state agencies. The bill:

- Eliminates the DLA's duties and responsibilities relating to neighborhood improvement districts;
- Transfers the DLA's duties and responsibilities relating to claims for restitution to other state agencies;
- Transfers the duties relating to the convenience businesses to the Department of Business and Professional Regulation (DBPR);
- Modifies the current prohibitions against unconscionable prices; and
- Extends the repeal date for the Attorney General to have access to records ordered by a court in regard to the prescription drug monitoring program to June 30, 2023.

The bill's provisions will reduce the workload of the DLA and increase workload for other state agencies. See Section V.

The bill takes effect on June 30, 2021.

II. Present Situation:

The Attorney General

The Attorney General (AG) is a statewide elected official directed by the Florida Constitution to serve as the chief legal officer for the State of Florida. The AG is responsible for protecting consumers from various types of fraud, enforcing the state's antitrust laws, defending the state in civil ligation cases, and representing the people of the state when criminals appeal their convictions in state and federal courts.[1] The AG defends the statutes enacted by the Legislature and is authorized to form official legal opinions at the request of public officials on questions relating to the application of state law. The AG serves as a member of the Florida Cabinet along with the Chief Financial Officer and the Commissioner of Agriculture. The AG is the head of the Department of Legal Affairs (DLA) and is responsible for providing all legal services required by any department.[2]

Florida Supreme Court Reporter

Since 1881, the Florida Supreme Court Clerk has been required to deliver to the AG a copy of each volume of Florida Supreme Court opinions in the Clerk's care or custody that the AG's office may be without. The AG must keep the copies at their office at the Capitol and has been, by law, the official Supreme Court reporter since 1885. However, Florida Supreme Court opinions are now published online and in other reports available in the AG's law library.[3]

Safe Neighborhood Improvement District

A safe neighborhood improvement district (district) is a district located in an area in which more than 75 percent of the land is used for residential purposes, commercial, or business purposes, excluding land area used for public facilities.[4] An established district must have a plan to reduce crime through environmental design, environmental security, defensible space techniques, or community policing innovations. A district is required to register within 30 days with the Department of Economic Opportunity (DEO) and the DLA, providing the departments with the district's name, size, location, and type. There are currently 27 active districts in the state.[5] The governing body of the county is eligible to request a grant from the Safe Neighborhoods Program.[6]

Safe Neighborhoods Program

The Safe Neighborhoods Program was created to provide planning grants and technical assistance on a 100 percent matching basis to the neighborhood improvement districts. Applications for planning grants must have verification that the local governing body has passed

[1] Office of the Attorney General, *Role and Function of the Attorney General, available at* http://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F, last visited (March 3, 2021)
[2] Section 16.015, F.S.
[3] Section 16.101, F.S.
[4] Section 163.503(1), F.S.
[5] Florida Department of Economic Opportunity, *Division of Community Development, Official List of Special Districts Online, available at* http://specialdistrictreports.floridajobs.org/webreports/functionsdetail.aspx (last visited March 9, 2021).
[6] *Id.*

an ordinance creating neighborhood improvement districts, and verification of commitment to provide matching funds for the purpose of planning of neighborhood improvement districts.[7] Planning grants shall be rewarded to eligible applicants, with the amount totaling as follows:

- Property owner's association neighborhood improvement districts may receive up to $20,000;
- Local government neighborhood improvement districts may receive up to $100,000;
- Special neighborhood improvement districts may receive up to $50,000; and
- Community redevelopment neighborhood improvement districts may receive up to $50,000.[8]

Each neighborhood improvement district that receives funds is required to submit an audit.

State Institutions Claims Program

The State Institutions Claims Program was created to make restitution of property damages and direct medical expenses for injuries caused by shelter children, foster children, escapees, inmates, or patients of state institutions or developmental disabilities center. Claims for restitution may be filed with the DLA, and the DLA shall have full power to hear, investigate, and determine all questions about the claims. The DLA is authorized to pay individual claims up to $1,000 or, with respect to children in foster care and their families, up to $1,500. The DLA is responsible for working with other state agencies to streamline the process of investigations, hearings, and determinations.[9] In the past five years, the Agency for Persons with Disabilities has had 41 claims filed, with 30 of them considered eligible for restitution.[10] In the past five years, the Department of Juvenile Justice has had three claims filed.[11]

Price Gouging during a Declared State of Emergency

Section 501.160, F.S., referred to as the Price Gouging Law, was passed to prevent the dramatic increase in the prices of certain essential commodities during periods of disaster.[12] The price of an essential commodity is considered unconscionable if the amount charged represents a gross disparity between the price of the commodity and the average price of that commodity when rented, leased, or sold in the usual course of business during the 30 days prior to a declaration of emergency. Upon a declaration of a state of emergency by the Governor, a person or their agent is prohibited from renting or selling at an unconscionable price. It is unlawful and a violation of s. 501.204, F.S., for any person to impose unconscionable prices for the rental, lease, or sale of any commodity, dwelling unit, or self-storage unit. Price increases approved by an appropriate governmental entity is not a violation of s. 501.204, F.S. The prohibition on unconscionable pricing within the area of the state of emergency is limited to no more than 60 days under the initial declared state of emergency. The prohibition may be "renewed" by a statement of any

[7] Section 163.517(2)(a-b), F.S.
[8] Section 163.517(1)(a-d), F.S.
[9] Section 402.181, F.S.
[10] *See* Agency for Persons with Disabilities, *Senate Bill 1040 Agency Legislative Analysis* (February 24, 2021) (on file with the Senate Committee on Governmental Oversight and Accountability).
[11] *See* Department of Juvenile Justice, *Senate Bill 1040 Agency Legislative Analysis* (February 25, 2021) (on file with the Senate Committee on Governmental Oversight and Accountability).
[12] Section 501.160, F.S.

subsequent "renewals" of the declared state of emergency. The state attorney or AG may prosecute any violation of s. 501.204, F.S.

Convenience Business Security

The DLA has the rulemaking authority as necessary to implement provisions of the Business Security Act (Act).[13] Rule 2A-5.005, Florida Administrative Code, provides safety standards, training curriculum and enforcement procedures for the Act.

A convenience business is any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between 11:00 p.m. and 5:00 a.m.[14] Every convenience business is required to have certain security devices. These include a security camera, a safe or cash management device, a lighted parking lot, a sign stating cash register contains less than $50, window signage that allows a clear view from outside the building, and a cash management policy limiting cash at hand after 11:00 p.m. If a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment, occurs or has occurred at a convenience business since July 1, 1989, the business needs to implement one of the following policies:

- Provide at least two employees on the premises at all times after 11:00 p.m. and before 5:00 a.m.
- Install for use by employees at all times after 11:00 p.m. and before 5:00 a.m., a secured safety enclosure of transparent polycarbonate or other material;
- Provide a security guard on the premises at all times after 11:00 p.m. and before 5:00 a.m.;
- Lock the business premises throughout the hours of 11:00 p.m. to 5:00 a.m., and only transact business through an indirect pass-through trough, trapdoor, or window; or
- Close the business at all times after 11:00 p.m. and before 5:00 a.m.

The DLA will provide notice to any convenience business to which an incident has previously occurred. A business can file a notice for exemption with the DLA if no incident has occurred for no less than 24 months immediately preceding the filing of a notice of exemption.[15] The DLA has the authority to enforce violations of the law that result in civil penalties of up to $5,000.[16]

Training of Employees

The owner of a convenience business is required to provide proper robbery deterrence and safety training by an approved curriculum to its retail employees within 60 days of employment. The curriculum shall be submitted to the AG. The AG will review and approve or disapprove the curriculum in writing within 60 days after receipt. Any curriculum approved by the AG since September of 1990 is subject to reapproval by the AG two years from the anniversary of initial approval and biennially thereafter.

[13] Section 812.176,F.S
[14] Section 812.171, F.S.
[15] Section 812.173(5), F.S.
[16] The Department of Legal Affairs, *The Convenience Business Security Act, available at* http://www.fcpti.com/fcpti.nsf/pages/CBSA, (last visited March 5, 2021)

Prescription Drug Monitoring Program

The Prescription Drug Monitoring Program (PDMP) uses a comprehensive electronic system/database, maintained by the Department of Health (DOH), to monitor the prescribing and dispensing information of certain controlled substances. Section 893.0551(3)(e), F.S., authorizes the AG, upon authorization by a trial court, to use confidential and exempt information from the PDMP database that has been de-identified for active investigations or pending civil or criminal litigation involving prescribed controlled substances. The AG must ensure that the obtained de-identified information is used only for the purpose stated in the court order. The AG must maintain a log of each person with which the information is shared, execute a confidentiality agreement or an agreement bound by a protective order with each such person, ensure the information is maintained in a secure manner, and require each such person to return all information or certify its destruction to the AG upon the final resolution of the matter for which the information was requested.[17] The AG's access to information in the PDMP is scheduled to be repealed on June 30, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The Department of Economic Opportunity

The purpose of the DEO, as established by s. 20.60, F.S., is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians. The head of the DEO is the executive director, appointed by the Governor, subject to confirmation by the Senate, and serving at the pleasure of and reporting to the Governor.[18] The DEO has the following divisions:

- The Division of Strategic Business Development;
- The Division of Community Development;
- The Division of Workforce Services;
- The Division of Finance and Administration; and
- The Division of Information Technology.

III. Effect of Proposed Changes:

Sections 1 repeals s. 16.10, F.S., which requires the clerk of the Florida Supreme Court to provide the decisions of the Supreme Court and requires the AG to maintain the decisions within the AG's office in the Capitol.

Section 2 repeals s. 16.101, F.S., which requires the AG to be the reporter for the Florida Supreme Court.

Section 3 amends s. 163.503, F.S., relating to the Safe Neighborhoods Act, to change the definition of "department" to mean the DEO rather than the DLA.

[17] Section 893.055(5)(b), F.S.
[18] Section 20.60(2), F.S.

Section 4 amends s. 163.504, F.S., to eliminate the authority of a city or county that creates a safe neighborhood improvement district to request a grant from the Safe Neighborhood Program.

Section 5 amends s. 163.5055, F.S., to eliminate the duty of a neighborhood improvement district to register with the DLA (the duty to register with DEO remains), and to eliminate the duty of a local governing body that authorizes the dissolution of a district to notify the DLA (the duty to notify the DEO remains).

Section 6 amends s. 163.506, F.S., to eliminate a requirement that a new local government neighborhood improvement district notify the DLA within 30 days of its creation (the duty to notify DEO remains).

Section 7 amends s. 163.508, F.S., to eliminate a requirement that a new property owners' association neighborhood improvement district notify the DLA within 30 days of its creation (the duty to notify DEO remains).

Section 8 amends s. 163.511, F.S., to eliminate a requirement that a new special residential or business neighborhood improvement district notify the DLA within 30 days of its creation (the duty to notify DEO remains).

Section 9 repeals s. 163.517, F.S., which creates the Safe Neighborhoods Program.

Section 10 repeals s. 163.519, F.S., which outlines the duties of the DLA in relation to neighborhood improvement districts.

Section 11 repeals s. 163.521, F.S., which establishes a grant program for neighborhood improvement districts.

Section 12 repeals s. 163.5215, F.S., which establishes that the provisions of neighborhood improvement districts may not be construed to modify, limit, expand, or supersede any existing laws relating to the closing or abandonment of public roads, the denial of access to areas for public use, or the use of public facilities.

Section 13 repeals s. 163.522, F.S., which provides that any county or municipality that has authorized the creation of a community redevelopment area be directed to give consideration to the creation of a neighborhood improvement district within said area.

Section 14 repeals s. 163.523, F.S., which allows local governments to cooperate with community organizations in the creation of safe neighborhood improvement districts.

Section 15 amends s. 163.524, F.S., to conform to the changes of the bill.

Section 16 amends s. 376.84, F.S., to conform to the changes of the bill.

Section 17 amends s. 402.181, F.S., to require claims to be filed with the Department of Children and Families (DCF), the Department of Juvenile Justice (DJJ), the Department of Health (DOH), the Department of Corrections (DOC), or the Agency for Persons with Disabilities (APD).

The section transfers the power and authority to approve and deny claims from the DLA to the agencies and departments that deal with the claims.

The section provides that the DCF, the DJJ, the DOH, the DOC, and the APD adopt rules to process the claims and to ensure that eligible claimants receive restitution. Previously, the DLA was responsible for working with the departments and agencies to create a process.

Section 18 amends s. 501.160, F.S., to make the rental or sale of a dwelling unit or self-storage facility that is necessary for habitation or use as a direct result of the emergency at an unconscionable price, unlawful and a violation of unfair methods competition law. The bill allows the governor, by executive order with specific reference, rather than by renewals of the declared state of emergency, to extend the prohibition on essential commodities, or on any dwelling unit or self-storage facility.

Section 19 amends s. 775.083, F.S., to conform to the changes of the bill.

Section 20 amends s. 812.171, F.S., to further specify that the definition of a "convenience business" is one which must be licensed by the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation (DBPR) pursuant to chapter 210, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, or chapter 569, as applicable.

Section 21 amends s. 812.173, F.S., to transfer the duties relating to convenience business security from the DLA to the Division of Alcoholic Beverages and Tobacco within the DBPR. The section also requires notification to the Division within 30 days if certain crimes occur arising out of the operation of the business and requires security measures required under current law be implemented within the same timeframe.

Section 22 amends s. 812.174, F.S., to transfer the duties relating to convenience business security training for their employees on safety training and robbery deterrence from the AG to the Division of Alcoholic Beverages and Tobacco within the DBPR.

Section 23 amends s. 812.175, F.S., to transfer the duties relating to violations and fines for convenience business security from the AG to the Division of Alcoholic Beverages and Tobacco within the DBPR.

Section 24 amends s. 812.176, F.S., to transfer the duties of adopting rules as necessary to implement the provisions of the Convenience Business Security Act from the DLA to the Division of Alcoholic Beverages and Tobacco within the DBPR.

Section 25 amends ss. 893.055 and 893.0551, F.S., to delay the scheduled repeal of provisions granting the Attorney General access to records ordered by a court in regard to the Prescription Drug Monitoring Program. [The repeal date moves to June 30, 2023. Currently, the repeal date is June 30, 2021.]

Section 26 provides that the bill take effect June 30, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or 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 bill limits price gouging protections relating to rent of a dwelling unit or a self-service storage facility during a declared state of emergency, which could subject Florida consumers to higher rent prices during a state of emergency.

C. Government Sector Impact:

The bill's provisions will shift workload from the DLA to other state agencies. For example, the bill eliminates the DLA's responsibilities for the processing of registrations and dissolutions of safe neighborhood improvement districts. As a result, the DEO may experience a workload increase relating to these functions. Repealing s. 167.517, F.S., related to the Safe Neighborhoods Program, and the ability of a governing body of a municipality or county to request grant funds, will have no fiscal impact. Funding for this program ended in 1992 and the trust fund was eliminated the following year.[19]

[19] *See* Department of Legal Affairs, *Senate Bill 1040 Agency Legislative Analysis* (March 10, 2021) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

Additionally, the bill transfers responsibilities associated with receiving and processing restitution claims from DLA to the DCF, the DJJ, the DOH, the DOC, and the APD. As a result, these agencies may experience increased workloads associated with these functions. Similarly, the bill transfers processing exemption requests, approving proposed training curricula, and enforcing provisions under the Convenience Business Security Act from DLA to the Division of Alcoholic Beverages and Tobacco within the DBPR, which may impact the Division's workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 416 to 417 change the grant of rulemaking authority under the Convenience Security Act (Act) from the DLA to the DBPR. However, the bill as currently drafted does not provide for the transfer of the Act's sole rule - Rule 2A-5.005, F.A.C., which implements the provisions of the Act. Thus, during the time frame in which the DBPR takes to adopt the rule, there will be no rule in effect regarding the Act. The Legislature may consider an amendment providing an explicit transfer of the administrative rule in chapter 2A-5 from the DLA to the DBPR.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.503, 163.504, 163.5055, 163.506, 163.508, 163.511, 163.524, 376.84, 402.181, 501.160, 775.083, 812.173, 812.174, 812.175, 812.176, and 960.21.

This bill repeals the following sections of the Florida Statutes: 16.10, 16.101, 163.517, 163.519, 163.521, 163.5215, 163.522, and 163.523.

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 Appropriations on March 18, 2021:
The committee substitute:

- Removes the provision exempting the Crimes Compensation Trust Fund from the service charge to general revenue; and
- Amends the definition of "convenience business" in s. 812.171, F.S. to specify the business must be licensed by the Division of Alcoholic Beverages and Tobacco within the DBPR pursuant to chapter 210, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, or chapter 569, as applicable.

CS by Governmental Oversight and Accountability on March 10, 2021:
The CS removes the service charge of the Crimes Compensation Trust Fund from being paid out of moneys collected and deposited into the trust fund.

The CS provides that it is unlawful for a person to rent or sell, at an unconscionable price, any dwelling unit or self-storage facility, which is limited to that which is necessary for consumption or use within the area for which a state of emergency is declared.

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 Committees on Appropriations; and Governmental Oversight and Accountability; and Senator Brodeur

576-03051-21 20211040c2

A bill to be entitled

An act relating to duties of the Attorney General; repealing s. 16.10, F.S., relating to the receipt of Supreme Court decisions by the Attorney General; repealing s. 16.101, F.S., relating to the Supreme Court reporter; amending s. 163.503, F.S.; revising the definition of "department" to conform to changes made by the act; amending s. 163.504, F.S.; deleting provisions relating to the Safe Neighborhoods Program; amending ss. 163.5055, 163.506, 163.508, and 163.511, F.S.; relieving the Department of Legal Affairs from certain duties associated with specified neighborhood improvement districts; repealing s. 163.517, F.S., relating to the Safe Neighborhoods Program; repealing s. 163.519, F.S., relating to the duties of the Department of Legal Affairs; repealing s. 163.521, F.S., relating to funding of neighborhood improvement districts inside enterprise zones; repealing s. 163.5215, F.S., relating to the construction of the Safe Neighborhoods Act; repealing s. 163.522, F.S., relating to state redevelopment programs; repealing s. 163.523, F.S., relating to the cooperation and involvement of community organizations to create safe neighborhood districts; amending s. 163.524, F.S.; conforming a provision to changes made by the act; amending s. 376.84, F.S.; conforming a provision to changes made by the act; amending s. 402.181, F.S.; requiring certain claims for restitution to be filed with specified entities; removing the Department of

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

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Legal Affairs as an entity for such filings; authorizing the Department of Children and Families, the Department of Health, the Department of Juvenile Justice, the Department of Corrections, and the Agency for Persons with Disabilities to adopt rules to process specified claims; amending s. 501.160, F.S.; authorizing certain declarations during a state of emergency to be extended by executive order; amending s. 775.083, F.S.; conforming a provision to changes made by the act; amending s. 812.171, F.S.; revising a definition; amending ss. 812.173, 812.174, 812.175, and 812.176, F.S.; revising provisions to require that the Division of Alcoholic Beverages and Tobacco, instead of the Attorney General, regulate convenience businesses; amending chapter 2019-127, Laws of Florida; extending the timeframe for the Attorney General to access records from the prescription drug monitoring program when ordered by a court under specified provisions; delaying the scheduled repeal of amendments until a specified date unless reviewed and saved from repeal through reenactment by the Legislature; providing an effective date.

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

Section 1. Section 16.10, Florida Statutes, is repealed.

Section 2. Section 16.101, Florida Statutes, is repealed.

Section 3. Subsection (3) of section 163.503, Florida Statutes, is amended to read:

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

163.503 Definitions.—

(3) "Department" means the Department of Economic Opportunity ~~Legal Affairs~~.

Section 4. Section 163.504, Florida Statutes, is amended to read:

163.504 Safe neighborhood improvement districts; planning funds.—

~~(1)~~ The governing body of any municipality or county may authorize the formation of safe neighborhood improvement districts through the adoption of a planning ordinance which specifies that such districts may be created by one or more of the methods established in ss. 163.506, 163.508, 163.511, and 163.512. No district may overlap the jurisdictional boundaries of a municipality and the unincorporated area of a county, except by interlocal agreement.

~~(2) If the governing body of a municipality or county elects to create a safe neighborhood improvement district, it shall be eligible to request a grant from the Safe Neighborhoods Program, created pursuant to s. 163.517 and administered by the Department of Legal Affairs, to prepare a safe neighborhood improvement plan for the district.~~

~~(3) Municipalities and counties may implement the provisions of this section without planning funds from the Department of Legal Affairs. However, nothing in this section shall be construed to exempt any district from the requirements of providing a safe neighborhood improvement plan pursuant to s. 163.516.~~

Section 5. Subsection (1) of section 163.5055, Florida Statutes, is amended to read:

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

163.5055 Registration of district establishment; notice of dissolution.—

(1)(a) Each neighborhood improvement district authorized and established under this part shall within 30 days thereof register with ~~both~~ the Department of Economic Opportunity ~~and the Department of Legal Affairs~~ by providing the department ~~these departments~~ with the district's name, location, size, and type, and such other information as the department ~~departments~~ may require.

(b) Each local governing body that authorizes the dissolution of a district shall notify ~~both~~ the Department of Economic Opportunity ~~and the Department of Legal Affairs~~ within 30 days after the dissolution of the district.

Section 6. Paragraph (h) of subsection (1) of section 163.506, Florida Statutes, is amended to read:

163.506 Local government neighborhood improvement districts; creation; advisory council; dissolution.—

(1) After a local planning ordinance has been adopted authorizing the creation of local government neighborhood improvement districts, the local governing body of a municipality or county may create local government neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(h) Requires the district to notify the ~~Department of Legal Affairs and the~~ Department of Economic Opportunity in writing of its establishment within 30 days thereof pursuant to s. 163.5055.

Section 7. Paragraph (g) of subsection (1) of section 163.508, Florida Statutes, is amended to read:

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

163.508 Property owners' association neighborhood improvement districts; creation; powers and duties; duration.—

(1) After a local planning ordinance has been adopted authorizing the creation of property owners' association neighborhood improvement districts, the local governing body of a municipality or county may create property owners' association neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(g) Requires the district to notify the ~~Department of Legal Affairs and the~~ Department of Economic Opportunity in writing of its establishment within 30 days thereof pursuant to s. 163.5055.

Section 8. Paragraph (i) of subsection (1) of section 163.511, Florida Statutes, is amended to read:

163.511 Special neighborhood improvement districts; creation; referendum; board of directors; duration; extension.—

(1) After a local planning ordinance has been adopted authorizing the creation of special neighborhood improvement districts, the governing body of a municipality or county may declare the need for and create special residential or business neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(i) Requires the district to notify the ~~Department of Legal Affairs and the~~ Department of Economic Opportunity in writing of its establishment within 30 days thereof pursuant to s. 163.5055.

Section 9. Section 163.517, Florida Statutes, is repealed.

Section 10. Section 163.519, Florida Statutes, is repealed.

Section 11. Section 163.521, Florida Statutes, is repealed.

Section 12. Section 163.5215, Florida Statutes, is repealed.

Section 13. Section 163.522, Florida Statutes, is repealed.

Section 14. Section 163.523, Florida Statutes, is repealed.

Section 15. Subsection (5) of section 163.524, Florida Statutes, is amended to read:

163.524 Neighborhood Preservation and Enhancement Program; participation; creation of Neighborhood Preservation and Enhancement Districts; creation of Neighborhood Councils and Neighborhood Enhancement Plans.—

(5) The Neighborhood Council and local government planning agency shall be eligible to receive grants ~~from the Safe Neighborhoods Program as provided in s. 163.517~~.

Section 16. Paragraph (c) of subsection (1) of section 376.84, Florida Statutes, is amended to read:

376.84 Brownfield redevelopment economic incentives.—It is the intent of the Legislature that brownfield redevelopment activities be viewed as opportunities to significantly improve the utilization, general condition, and appearance of these sites. Different standards than those in place for new development, as allowed under current state and local laws, should be used to the fullest extent to encourage the redevelopment of a brownfield. State and local governments are encouraged to offer redevelopment incentives for this purpose, as an ongoing public investment in infrastructure and services, to help eliminate the public health and environmental hazards, and to promote the creation of jobs in these areas. Such incentives may include financial, regulatory, and technical assistance to persons and businesses involved in the

redevelopment of the brownfield pursuant to this act.

(1) Financial incentives and local incentives for redevelopment may include, but not be limited to:

(c) Safe neighborhood improvement districts as provided in ss. 163.501-163.516 ~~ss. 163.501-163.523~~.

Section 17. Subsections (2) and (3) of section 402.181, Florida Statutes, are amended to read:

402.181 State Institutions Claims Program.—

(2) Claims for restitution may be filed with the Department of Children and Families, the Department of Health, the Department of Juvenile Justice, the Department of Corrections, or the Agency for Persons with Disabilities. The claim must be filed with the department or agency responsible for monitoring the person who caused the medical injury or the property damage ~~Legal Affairs at its office in accordance with regulations prescribed by the Department of Legal Affairs~~. The departments and agencies ~~Department of Legal Affairs shall~~ have the full power and authority to approve or deny ~~hear, investigate, and determine all questions in respect to such~~ claims and may ~~is authorized~~, within the limits of current appropriations, ~~to~~ pay individual claims up to $1,000 or, with respect to children in foster care and their families, individual claims up to $1,500. Claims in excess of these amounts shall continue to require legislative approval.

(3)~~(a)~~ The Department of Children and Families, the Department of Health, the Department of Juvenile Justice, the Department of Corrections, and the Agency for Persons with Disabilities shall adopt rules to process claims and to ensure that eligible claimants receive restitution within a reasonable

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

timeframe ~~The Department of Legal Affairs shall make or cause to be made such investigations as it considers necessary in respect to such claims. Hearings shall be held in accordance with chapter 120~~.

~~(b) The Department of Legal Affairs shall work with the Department of Children and Families, the Department of Health, the Department of Juvenile Justice, the Department of Corrections, and the Agency for Persons with Disabilities to streamline the process of investigations, hearings, and determinations with respect to claims under this section, to ensure that eligible claimants receive restitution within a reasonable time.~~

Section 18. Subsections (2) and (3) of section 501.160, Florida Statutes, are amended to read:

501.160 Rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.—

(2) Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204 for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared:~~,~~

(a) Any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency.

(b) Any dwelling unit or self-storage facility that is necessary for habitation or use as a direct result of the emergency.

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

This prohibition is effective not to exceed 60 days under the initial declared state of emergency as defined in s. 252.36(2) and may be extended by an executive order issued by the Governor specifically referencing this section ~~shall be renewed by statement in any subsequent renewals of the declared state of emergency by the Governor~~.

~~(3) It is unlawful and a violation of s. 501.204 for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a period of declared state of emergency.~~

Section 19. Subsection (2) of section 775.083, Florida Statutes, is amended to read:

775.083 Fines.—

(2) In addition to the fines set forth in subsection (1), court costs shall be assessed and collected in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law. The court costs imposed by this section shall be $50 for a felony and $20 for any other offense and shall be deposited by the clerk of the court into an appropriate county account for disbursement for the purposes provided in this subsection. A county shall account for the funds separately from other county funds as crime prevention funds. The county, in consultation with the sheriff, must expend such funds for crime prevention programs in the county~~,~~ ~~including safe neighborhood programs under ss. 163.501-163.523~~.

Section 20. Section 812.171, Florida Statutes, is amended

to read:

812.171 Definition.—As used in this act, the term "convenience business" means any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, ~~and~~ that is open for business at any time between the hours of 11 p.m. and 5 a.m., and that is licensed by the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation pursuant to chapter 210, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, or chapter 569, as applicable. The term "convenience business" does not include:

(1) A business that is solely or primarily a restaurant.

(2) A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.

(3) A business that has at least 10,000 square feet of retail floor space.

(4) A ~~The term "convenience business" does not include any~~ business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

Section 21. Subsections (3), (4), and (5) of section 812.173, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

812.173 Convenience business security.—

(3) Every convenience business shall be equipped with a silent alarm to law enforcement or a private security agency, unless an application for an exemption, adopted by rule by the Division of Alcoholic Beverages and Tobacco, is made to and granted by the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~. An application for exemption must be in

writing and must be accompanied by an administrative fee of $25 for each store for which an exemption would apply.

(4) If a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment, as those crimes are identified and defined by Florida Statutes, occurs or has occurred at a convenience business since July 1, 1989, and arises out of the operation of the convenience business, that convenience business shall notify the Division of Alcoholic Beverages and Tobacco in writing and shall implement at least one of the following security measures within 30 days after a judicial determination that one or more of the aforementioned identified crimes occurred at the convenience business:

(a) Provide at least two employees on the premises at all times after 11 p.m. and before 5 a.m.;

(b) Install for use by employees at all times after 11 p.m. and before 5 a.m. a secured safety enclosure of transparent polycarbonate or other material that meets at least one of the following minimum standards:

1. American Society for Testing and Materials Standard D3935 (classification PC110 B 3 0800700) and that has a thickness of at least 0.375 inches and has an impact strength of at least 200 foot pounds; or

2. Underwriters Laboratory Standard UL 752 for medium power small arms (level one), Bullet Resisting Equipment;

(c) Provide a security guard on the premises at all times after 11 p.m. and before 5 a.m.;

(d) Lock the business premises throughout the hours of 11 p.m. to 5 a.m., and only transact business through an indirect

pass-through trough, trapdoor, or window; or

(e) Close the business at all times after 11 p.m. and before 5 a.m.

(5) For purposes of this section, any convenience business that by law implemented any of the security measures set forth in paragraphs (4)(a)-(e) and has maintained said measures as required by the Division of Alcoholic Beverages and Tobacco ~~Department of Legal Affairs~~ without any occurrence or incidence of the crimes identified by subsection (4) for a period of no less than 24 months immediately preceding the filing of a notice of exemption, may file with the department a notice of exemption from these enhanced security measures. In no event shall this exemption be interpreted to preclude full compliance with the security measures set forth in subsection (4) should any occurrence or incidence of the crimes identified by subsection (4) cause subsection (4) to be statutorily applicable. As of July 1, 2021, the Division of Alcoholic Beverages and Tobacco ~~the date this act becomes law, the Department of Legal Affairs~~ will provide notice to any convenience business to which a subsection (4) incident ~~has previously~~ occurred between July 1, 2019, and July 1, 2021. In no event shall the state or the Division of Alcoholic Beverages and Tobacco ~~Department of Legal Affairs~~ incur any liability for the regulation and enforcement of this act.

(6) The Division of Alcoholic Beverages and Tobacco has the authority to investigate the premises and records of any licensee in order to determine whether the licensee is a convenience business and subject to this act.

Section 22. Section 812.174, Florida Statutes, is amended

to read:

812.174 Training of employees.—The owner or principal operator of a convenience business or convenience businesses shall provide proper robbery deterrence and safety training by an approved curriculum to its retail employees within 60 days of employment. ~~Existing retail employees shall receive training within 6 months of April 8, 1992.~~ A proposed curriculum shall be submitted in writing to the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ with an administrative fee not to exceed $100. The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ shall review and approve or disapprove the curriculum in writing within 60 days after receipt. The state shall have no liability for approving or disapproving a training curriculum under this section. Approval shall be given to a curriculum which trains and familiarizes retail employees with the security principles, devices, and measures required by s. 812.173. Disapproval of a curriculum shall be subject to the provisions of chapter 120. No person shall be liable for ordinary negligence due to implementing an approved curriculum if the training was actually provided. A curriculum must ~~shall~~ be submitted for reapproval biennially on or before the date established by rule by the Division of Alcoholic Beverages and Tobacco and must be accompanied by ~~with~~ an administrative fee not to exceed $100. ~~Any curriculum approved by the Attorney General since September 1990 shall be subject to reapproval 2 years from the anniversary of initial approval and biennially thereafter.~~

Section 23. Section 812.175, Florida Statutes, is amended to read:

812.175 Enforcement; civil fine.—

(1) The violation of any provision of this act by any owner or principal operator of a convenience business shall result in a notice of violation from the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~. Violators shall have 30 days after receipt of the notice to provide proof of compliance to the Division of Alcoholic Beverages and Tobacco ~~Attorney General's office~~. If the violation continues after the 30-day period, the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ may impose a civil fine not to exceed $5,000. The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ has the authority to investigate any alleged violation and may compromise any alleged violation by accepting from the owner or principal operator an amount not to exceed $5,000. The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ may suspend the imposition of any fine conditioned upon terms the Division of Alcoholic Beverages and Tobacco ~~Attorney General's office~~ in its discretion deems appropriate. Notices of violation and civil fines are ~~shall be~~ subject to ~~the provisions of~~ chapter 120.

(2) Moneys received by the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ pursuant to this act must ~~shall~~ be deposited in the General Revenue Fund.

(3) The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ is given full power and authority to petition for an injunction when it is determined that the health, safety, and public welfare is threatened by continued operation of a convenience business in violation of this act. In any action for injunction, the Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ may seek a civil penalty not to exceed $5,000

per violation, plus attorney's fees and costs.

(4) The Division of Alcoholic Beverages and Tobacco ~~Attorney General~~ may enter into agreements with local governments to assist in the enforcement of ss. 812.1701-812.175. Such agreements may include provision for reimbursement of investigative and enforcement costs incurred by such local governments.

Section 24. Section 812.176, Florida Statutes, is amended to read:

812.176 Rulemaking authority.—The Division of Alcoholic Beverages and Tobacco ~~Department of Legal Affairs~~ shall have the power to adopt rules pursuant to chapter 120 as necessary to implement ~~the provisions of~~ the Convenience Business Security Act. The security measures and training provisions of ss. 812.173 and 812.174 shall meet the requirements of the department as set forth by rule.

Section 25. Section 3 of chapter 2019-127, Laws of Florida, is amended to read:

Section 3. The amendments to ss. 893.055 and 893.0551, Florida Statutes, made by this act shall stand repealed on June 30, 2023 ~~June 30, 2021~~, unless reviewed and saved from repeal through reenactment by the Legislature. If such amendments are not saved from repeal, the text of ss. 893.055 and 893.0551, Florida Statutes, shall revert to that in existence on June 30, 2019, except that any amendments to such text other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.

Section 26. This act shall take effect June 30, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JASON BRODEUR
9th District

COMMITTEES:
Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Community Affairs

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEE:
Joint Administrative Procedures Committee

March 18, 2021

Honorable Kathleen Passidomo
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo,

I am writing to request that **SB 1040, Duties of the Attorney General**, be placed on the agenda to be heard in the Committee on Rules.

I appreciate your consideration in this matter.

Sincerely,

Jason Brodeur

Jason Brodeur

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
❒ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

1040
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Duties of the Attorney General

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 S Adams Street
Street

Phone 8502224082

Tallahassee FL 32301
City *State* *Zip*

Email Jake@frf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/21
Meeting Date

1040
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Duties of the Attorney General

Name Daniel Olson

Job Title Director of Government Relations

Address 400 S. Monroe St.
Street
Tallahassee FL 32399
City *State* *Zip*

Phone

Email

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/SB 1046
INTRODUCER:	Commerce and Tourism Committee, Senator Bean, and others
SUBJECT:	Arrest Booking Photographs
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	**Favorable**
2.	Harmsen	McKay	CM	**Fav/CS**
3.	Stokes	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1046 expands s. 901.43, F.S., to subject any person or entity that publishes or disseminates information relating to arrest booking photographs for a commercial purpose or pecuniary gain as their primary business model to a civil penalty for failing to remove the arrest booking photograph upon written request.

Section 901.43, F.S., prohibits any person or entity engaged in the business of publishing or otherwise disseminating arrest booking photographs from soliciting or accepting a fee to remove the photographs. Additionally, this section requires persons or entities who accept a fee for the removal of such photographs to remove the photographs within ten days of a written request or be subject to a civil penalty.

This bill may have an indeterminate fiscal impact on the courts due to the expansion of what entities are subject to civil penalties. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2021.

II. Present Situation:

Dissemination of Arrest Booking Photographs

Section 901.43, F.S., provides that any person or entity engaged in the business of publicly publishing arrest booking photographs may not solicit or accept a fee or other form of payment to remove the photographs.[1]

A person whose arrest booking photograph is published, or his or her legal representative, may request that a registered agent of the person or entity who published the photograph remove the photograph. The request must:

- Be made in writing.
- Be sent by registered mail.
- Include sufficient proof of identification of the person whose arrest booking photograph was published.
- Include specific information identifying the arrest booking photograph that the request seeks to remove.[2]

The person or entity that published the arrest booking photograph must remove the photograph within 10 days of receipt of the written request for removal.[3] If the photograph is not removed within 10 calendar days, the person seeking removal may bring a civil action to enjoin the continued publication of the photograph. Additionally, the court may impose a civil penalty of $1,000 per day for noncompliance and must award reasonable attorney fees and court costs. Money recovered for civil penalties must be deposited into the General Revenue Fund.[4]

Refusal to remove an arrest booking photograph after written request has been made constitutes an unfair or deceptive trade practice in accordance with part II of ch. 501, F.S.[5]

Section 901.43, F.S., only applies to a person or entity that solicits or accepts payments to remove arrest booking photographs.[6]

Public Disclosure of Criminal Record Information

All "materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge" are public records and open for public inspection, unless a specific exemption applies.[7]

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[1] Section 901.43(1), F.S.
[2] Section 901.43(2), F.S.
[3] *Id.*
[4] Section 901.43(3), F.S.
[5] Section 901.43(4), F.S.
[6] Section 901.43(5), F.S.
[7] Office of the Attorney General (Florida), *Public Records: A Guide for Law Enforcement Agencies* (2019 Edition), at p. 1. and endnote 1 (citing *Shevin v. Byron, Harless, Schaffer, Reid and Assocs., Inc*., 379 So. 2d 633, 640 (Fla. 1980)) and endnote 2 (citing *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420 (Fla. 1979)), *available at* http://myfloridalegal.com/webfiles.nsf/WF/MNOS-BAMQDX/$file/2019+Law+Enforcement+Guide+v6.pdf (last visited on Mar. 16, 2021).

Criminal record information may be obtained and published by non-governmental publishers. This information includes booking photographs, arrest reports, charging documents, sentencing orders, and criminal history information.[8] Like all other records prepared by Florida government agencies, arrest and crime reports are generally considered to be subject to public disclosure unless specifically exempted.[9] Statutory exemptions for active criminal investigative and intelligence information, confessions, juvenile offender records, and certain victim information may apply to crime reports and other law enforcement records.[10]

Arrest Record Information

Public record information pertaining to a person's arrest for the alleged commission of a crime includes the arrest report and booking photograph ("mugshot"). With few exceptions, arrest record information (including booking photographs) must be disclosed pursuant to a public records request.[11] However, the arrest record information of juveniles charged with misdemeanors is confidential and exempt,[12] and a public records custodian may choose to not electronically publish the arrest or booking photograph of a child that is not confidential and exempt.[13]

Arrest record information may be requested by many persons and entities, including members of the public, traditional news companies, companies that provide criminal history or criminal record information for a service or subscriber fee (e.g., so that a private employer may determine if a job applicant has a criminal history), and companies that are often referred to as "mugshot" companies.

Mugshot companies operate commercial websites that repost booking photographs. The companies often make a profit by charging a fee to remove the image. Photos posted on one site may also be reposted to other sites, causing continuing harm to the reputation of the individual.[14] Florida law does not specifically prohibit mugshot companies from posting booking photographs, but does prohibit charging a removal fee.[15]

Laws and Legislation of Other States

Some states have passed laws addressing the issue of publishing booking photographs for commercial gain. Fourteen states, including Florida, have enacted legislation designed to prohibit

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[8] The Florida Department of Law Enforcement is the central repository of criminal history information for the State of Florida. For a fee, a search of Florida criminal history information regarding a person may be performed. Excluded from the search is sealed or expunged information. Florida Department of Law Enforcement, Criminal History Information, *Search Florida's Criminal Histories,* https://web.fdle.state.fl.us/search/app/default (last visited Mar. 16, 2021).
[9] Office of the Attorney General (Florida), *Public Records: A Guide for Law Enforcement Agencies* (2019 Edition), at p. 6, *available at* http://myfloridalegal.com/webfiles.nsf/WF/MNOS-BAMQDX/$file/2019+Law+Enforcement+Guide+v6.pdf (last visited Mar. 16, 2021).
[10] *Id*. at 6-7.
[11] Op. Att'y Gen. 94-90 (October 25, 1994) (footnotes omitted), *available at* http://www.myfloridalegal.com/ago.nsf/Opinions/83A1D5004064269D852562210063168E (last visited Mar. 16, 2021).
[12] Sections 943.053(3), and 985.04(2), F.S.
[13] Section 985.04(2)(a)(2), F.S.
[14] National Conference of State Legislatures, *Mug Shots and Booking Photo Websites, Overview*, May 4, 2020, http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx (last visited Mar. 16, 2021).
[15] Section 901.43, F.S.

commercial website operators from posting mugshot photos on a website and charging a removal fee.[16] Additionally, some states have limited public access to booking photographs. For example, law enforcement in California have the discretion to furnish copies of booking photographs in response to a public request. However, once a copy is furnished to one member of the general public, it must be made available to all who make a request.[17]

An American Bar Association article suggests that there is no legal solution to this problem, and instead, the solution will develop through private sector activity.[18] For example, Google has adjusted its algorithms so that the mugshot companies will not appear as prominently in the search results. In addition, some credit card companies such as MasterCard, American Express, and Discover are cutting ties with these types of websites.[19]

Case Law

Persons whose booking photographs are posted by commercial entities have sought relief based on various causes of action. These include claims for an invasion of privacy based on false light, invasion of privacy based on unauthorized appropriation of name or likeness, defamation by slander, and unjust enrichment.[20]

In 2008, the Florida Supreme Court indicated that Florida does not recognize tort claims based on false light, "because we conclude that false light is largely duplicative of existing torts, but without the attendant protections of the First Amendment."[21] The Court specifically noted that the key elements of a false claim are nearly identical to the elements required in a defamation case.[22] Florida does recognize defamation claims.[23]

Right of Publicity

Section 540.08(1), F.S., prohibits a person from publishing, printing, displaying, or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the person's express written or oral consent to such use. There are exceptions for:

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[16] National Conference of State Legislatures, *supra* note 14. The thirteen states are California, Colorado, Georgia, Illinois, Kentucky, Maryland, Missouri, Oregon, South Carolina, Texas, Utah, Virginia, and Wyoming.
[17] Office of the Attorney General, State of California, Opinion No. 03-205 (July 14, 2003), *available at* https://oag.ca.gov/system/files/opinions/pdfs/03-205.pdf (last visited Mar. 16, 2021).
[18] Stephanie Francis Ward, *Hoist Your Mug: Websites Will Post Your Name and Photo; Others Will Charge You to Remove Them*, ABA JOURNAL, August 1, 2012, *available at* http://www.abajournal.com/magazine/article/hoist_your_mug_websites_will_post_your_name_and_photo_others_will_charge_yo (last visited Mar. 16, 2021).
[19] National Conference of State Legislatures, *Mug Shots and Booking Photo Websites, Overview*, May 4, 2020, http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx (last visited Mar. 16, 2021).
[20] A claim of false light is a type of a claim of invasion of privacy based in tort. For example, to prevail in a false light claim in Pennsylvania, a defendant must establish that a highly offensive false statement was publicized by a defendant with knowledge or in reckless disregard of its falsity. *Santillo v. Reedel*, 430 Pa. Super. 290, 295-296 (Pa. Super. Ct.1993).
[21] *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1100 (Fla. 2008).
[22] *Id*. at 1105-1106.
[23] *Id*. at 1111-1112. *See* ch. 770, F.S.

- Publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;
- The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use on or in connection with the initial sale or distribution; and
- Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph.[24]

When necessary consent is not obtained, the person whose name, portrait, photograph, or other likeness is used may bring an action to enjoin the unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.[25]

In 2014, a Florida federal district court denied the defendant's motion to dismiss a cause of action alleging a violation of s. 540.08, F.S., for publishing the plaintiff's booking photograph without her consent and advertising "unpublishing services" that required the payment of a fee to remove the photograph.[26] In a later proceeding, the court denied the plaintiff's Motion to Certify Class (to allow the case to proceed as a class action) without prejudice.[27] The class action was not re-filed, nor was the case resolved by trial on the merits. The resolution of the case and whether the plaintiff would have succeeded on the merits of her claim is unknown.

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

Section 901.43(4), F.S., subjects a person or entity that refuses to remove an arrest booking photograph after a specific request has been made to remove it to prosecution under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[28] The FDUTPA is based on federal law.[29] The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.[30] The Office of the State Attorney may enforce violations of the FDUTPA

[24] Section 540.08(4), F.S.
[25] Section 540.08(2), F.S.
[26] *Bilotta v. Citizen Info. Assocs., LLC*, 2014 U.S. Dist. LEXIS 3229 (M.D. Fla. Jan. 10, 2014).
[27] *Bilotta v. Citizen Info. Assocs., LLC*, 2014 U.S. Dist. LEXIS 68495 (M.D. Fla. May 19, 2014).
[28] Chapter 73-124, Laws of Fla., and s. 501.202, F.S.
[29] D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. Miami L. Rev. 1083, Summer 2011.
[30] Section 501.207, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited Mar. 16, 2021).

if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[31] Consumers may also file suit through private actions.[32]

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to $10,000 per willful violation.[33]

Remedies for private parties are limited to:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.[34]

Arrest Records and Employment

An online mugshot photo can complicate the hiring process for some.[35] According to one source, 77 percent of employers google their job applicants.[36] The Equal Employment Opportunity Commission (EEOC) has provided guidance that an arrest, in and of itself, is not a job-related consideration consistent with business necessity because the fact of an arrest alone does not establish that the criminal conduct occurred. However, this guidance further states that an employer may make an employment decision based on the conduct underlying an arrest if the conduct makes the individual unfit for the position in question.[37]

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[31] Section 501.203(2), F.S.
[32] Section 501.211, F.S.
[33] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.
[34] Section 501.211(1) and (2), F.S.
[35] *See, e.g.*, Samantha Schmidt, This S*ite Will Remove Your Mug Shot—For a Price, Authorities Say. Its Owners are Charged with Extortion*, THE WASHINGTON POST, May. 18, 2018, *available at* https://www.washingtonpost.com/news/morning-mix/wp/2018/05/18/this-site-will-remove-your-mug-shot-for-a-price-now-its-owners-are-charged-with-extortion/ (last visited Mar. 16, 2021); Ralph Cantave, *Florida's Mugshot Removal Law Isn't Working as Intended. This FAMU Professor Found out the Hard Way*, WFSU NEWS, Jan. 9, 2020, *available at* https://wusfnews.wusf.usf.edu/2020-01-09/floridas-mugshot-removal-law-isnt-working-as-intended-this-famu-professor-found-out-the-hard-way (last visited Mar. 16, 2020).
[36] Jason Tashea, *Use Copyright Law to Battle Mugshot Extortion*, ABA JOURNAL, Mar. 27, 2018, *available at* https://www.abajournal.com/lawscribbler/article/use_copyright_law_to_battle_against_mugshot_extortion (last visited Mar. 16, 2020).
[37] Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act*, No. 915.002 (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions (last visited Mar. 16, 2021).

III. Effect of Proposed Changes:

Section 901.43, F.S., prohibits any person or entity engaged in the business of publishing or otherwise disseminating arrest booking photographs from soliciting or accepting a fee to remove the photographs. Additionally, this section provides that persons or entities who accept a fee for the removal of such photographs must remove the photographs within ten days of a written request or be subject to a civil penalty.

The bill amends s. 901.43, F.S., to expand its application to any person or entity that publishes or disseminates information relating to arrest booking photographs when they do so for a commercial purpose or pecuniary gain. Therefore, these persons or entities are subject to a civil penalty for the failure to remove an arrest booking photograph upon written request.

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:

This bill may have an indeterminate fiscal impact on the courts due to the expansion of what entities are subject to civil penalties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 901.43 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 Commerce and Tourism on March 15, 2021:
The CS removes language that stated that this section did not apply to acts relating to the dissemination of news to the public, including gathering, publishing, or broadcasting information for a news-related purpose, or to any other act performed by a publisher, owner, agent, employee, or retailer of a newspaper, radio station, radio network, television station, television broadcast network, cable television network, or other online news outlet associated with any news organization.

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 Senators Bean, Baxley, and Bradley

577-02866-21 20211046c1

A bill to be entitled

An act relating to arrest booking photographs; amending s. 901.43, F.S.; expanding the applicability of provisions relating to the dissemination of arrest booking photographs to include a person or an entity whose primary business model is the publication or dissemination of such photographs for a commercial purpose or pecuniary gain; providing an effective date.

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

Section 1. Section 901.43, Florida Statutes, is amended to read:

901.43 Dissemination of arrest booking photographs.—

(1) Any person or entity engaged in the business of publishing through a publicly accessible print or electronic medium or otherwise disseminating arrest booking photographs of persons who have previously been arrested may not solicit or accept a fee or other form of payment to remove the photographs.

(2) A person whose arrest booking photograph is published or otherwise disseminated, or his or her legal representative, may make a request, in writing, for the removal of an arrest booking photograph to the registered agent of the person or entity who published or otherwise disseminated the photograph. The written request for removal of the arrest booking photograph must be sent by registered mail and include sufficient proof of identification of the person whose arrest booking photograph was published or otherwise disseminated and specific information

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

577-02866-21 20211046c1

identifying the arrest booking photograph that the written request is seeking to remove. Within 10 days of receipt of the written request for removal of the arrest booking photograph, the person or entity who published or otherwise disseminated the photograph shall remove the arrest booking photograph without charge.

(3) The person whose arrest booking photograph was published or otherwise disseminated in the publication or electronic medium may bring a civil action to enjoin the continued publication or dissemination of the photograph if the photograph is not removed within 10 calendar days after receipt of the written request for removal. The court may impose a civil penalty of $1,000 per day for noncompliance with an injunction and shall award reasonable attorney fees and court costs related to the issuance and enforcement of the injunction. Moneys recovered for civil penalties under this section shall be deposited into the General Revenue Fund.

(4) Refusal to remove an arrest booking photograph after written request has been made constitutes an unfair or deceptive trade practice in accordance with part II of chapter 501.

(5) This section does not apply to any person or entity that publishes or disseminates information relating to arrest booking photographs unless:

(a) The person or entity solicits or accepts payment to remove the photographs; or

(b) The person or entity's primary business model is the publishing and disseminating of arrest booking photographs for a commercial purpose or pecuniary gain.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #1046**, relating to Arrest Booking Photographs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Currently, there are mugshot posting websites that publish arrest booking photos and make advertisement revenue off them, while being unresponsive to written requests to remove the pictures. This leads to mugshots of Floridians haunting them in job interviews and other situations despite some being acquitted or having served their time. This bill broadens an existing provision to end this practice of profiting off mugshots and make the courts more effective in intervening.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

Rules 9AM 4/12k

THE FLORIDA SENATE

APPEARANCE RECORD

03/25/2021
Meeting Date

SB 1046
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Arrest Booking Photographs

Name Blake R. Mathesie

Job Title Law Student

Address 301 S Bronough St #600
Street
Tallahassee FL 32304
City *State* *Zip*

Phone 9546958190

Email bmathesie@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1088
INTRODUCER:	Criminal Justice Committee and Senator Rodrigues
SUBJECT:	Modification or Continuation of Terms of Probation
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	**Fav/CS**
2.	Siples	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1088 amends s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *all*, rather than *any*, of the following applies:

- The term of supervision is probation;
- The probationer does not qualify as a violent felony offender of special concern (VFOSC);
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.; and
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

The bill is effective upon becoming a law.

II. Present Situation:

Probation Supervision through the Department of Corrections

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.[1] The Department of Corrections (DOC) supervises more than 164,000 offenders on active community supervision. This includes offenders released from prison on

[1] Section 948.01, F.S.

parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.[2]

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose to ensure the offender's compliance with the terms of the sentence and the safety to the community.[3] Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

Violations of Probation

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.[4] A violation of probation (VOP) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.[5]

The offender must be returned to the court granting such probation.[6] Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.[7]

Upon a finding through a VOP hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.[8] In addition, if an offender qualifies as a VFOSC, the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.[9] The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.[10]

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[2] The DOC, *Probation Services*, available at http://www.dc.state.fl.us/cc/index.html (last visited March 5, 2021).
[3] Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.
[4] Section 948.10(3), F.S.
[5] Section 948.06(1)(a), F.S.
[6] *Id*.
[7] Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.
[8] Section 948.06(2)(b), F.S.
[9] *See* s. 948.06(8)(a), F.S., for all VFOSC qualifications and the enumerated list of felonies that are considered qualifying offenses. *See also* ch. 2007-2, L.O.F.
[10] Section 921.0024, F.S.

CS/HB 7125 (2019)

Prior to October 1, 2019, the effective date for section 63 of CS/HB 7125 (2019),[11] the sentencing court had the complete discretion to determine whether to continue, modify, or revoke an offender's probation subsequent to a violation of probation.[12] However, in part, CS/HB 7125 (2019) amended s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *any* of the following applies:

- The term of supervision is probation.
- The probationer does not qualify as a VFOSC.
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.[13]
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

Further, if the court is required to modify or continue the probationary term, the court may include in the sentence a maximum of 90 days in county jail as a special condition of probation.[14]

CS/HB 7125 (2019) also provided that if a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification or continuation, the court may revoke probation and sentence the probationer to a maximum of 90 days in county jail.[15]

However, the intent for this provision was to require modification or continuation of probation only when *all* of the enumerated circumstances were present.

Several courts have addressed the issue in cases in which the probationer has argued that the plain reading of the statute requires that only one of conditions listed is met, rather than all. Courts have generally held that the literal reading of the statute would lead to an absurd result, as all probationers would meet the first condition listed, being sentenced to a term of probation, and nullifying the subsequent conditions listed.[16]

[11] Chapter 2019-167, L.O.F.
[12] *See* s. 948.06, F.S. (2018).
[13] Section 948.06(9)(b), F.S., defines a "low-risk violation" to mean any of the following: a positive drug or alcohol test result; failure to report to the probation office; failure to report a change in address or other required information; failure to attend a required class, treatment or counseling session, or meeting; failure to submit to a drug or alcohol test; a violation of curfew; failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, paying court costs, or completing community service hours; leaving the county without permission; failure to report a change in employment; associating with a person engaged in criminal activity; or any other violation as determined by administrative order of the chief judge of the circuit.
[14] Section 948.06(2)(f)2., F.S.
[15] *See* s. 948.06(2)(f)3., F.S.
[16] *See Kirk v. State*, 303 So.3d 604, 606 (Fla. 1st DCA 2020); *Owens v. State*, 303 So.3d 993, 998 (Fla. 5th DCA 2020); and *Massey v. State*, 2021 WL 128212 (Fla. 1st DCA 2021).

III. Effect of Proposed Changes:

The bill amends s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *all*, rather than *any*, of the following applies:

- The term of supervision is probation;
- The probationer does not qualify as a violent felony offender of special concern (VFOSC);
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.; and
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 948.06 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 Criminal Justice on March 9, 2021:
The committee substitute corrects a grammatical error.

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 Criminal Justice; and Senator Rodrigues

591-02608-21 20211088c1

A bill to be entitled

An act relating to modification or continuation of terms of probation; amending s. 948.06, F.S.; revising the circumstances under which a court must modify or continue a term of probation; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(f)1. Except as provided in subparagraph 3. or upon waiver by the probationer, the court shall modify or continue a probationary term upon finding a probationer in violation when all ~~any~~ of the following apply ~~applies~~:

a. The term of supervision is probation;~~.~~

b. The probationer does not qualify as a violent felony offender of special concern, as defined in paragraph (8)(b);~~.~~

c. The violation is a low-risk technical violation, as defined in paragraph (9)(b); and~~.~~

d. The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory

591-02608-21 20211088c1

modification or continuation of his or her probation.

2. Upon modifying probation under subparagraph 1., the court may include in the sentence a maximum of 90 days in county jail as a special condition of probation.

3. Notwithstanding s. 921.0024, if a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification or continuation in subparagraph 1., the court may revoke probation and sentence the probationer to a maximum of 90 days in county jail.

4. For purposes of imposing a jail sentence under this paragraph only, the court may grant credit only for time served in the county jail since the probationer's most recent arrest for the violation. However, the court may not order the probationer to a total term of incarceration greater than the maximum provided by s. 775.082.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RAY WESLEY RODRIGUES
27th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Alternating Chair*
Joint Committee on Public Counsel Oversight

March 15, 2021

The Honorable Kathleen Passidomo
Senate Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: CS/SB 1088 – Modification or Continuation of Terms of Probation

Dear Madame Chair:

Please allow this letter to serve as my respectful request to place CS/SB 1088, relating to the modification or continuation of terms of probation, on the next committee agenda.

In 2019, the Legislature passed legislation requiring a court to modify and continue, rather than revoke, probation for specified offenders who violate probation by committing certain technical violations deemed low-risk. Because of a drafting error, statute currently requires this modification or continuation to occur when an offender meets any of the four enumerated criteria. CS/SB 1088 aligns statute with the Legislature's intent by requiring an offender to meet all four criteria.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Ray Rodrigues

Ray Rodrigues
Senate District 27

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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 1378
INTRODUCER:	Judiciary Committee and Senator Bradley
SUBJECT:	Corporate Espionage
DATE:	March 23, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Favorable**
2.	Bond	Cibula	JU	**Fav/CS**
3.	Cellon	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1378 creates the "Combating Corporate Espionage in Florida Act" within s. 812.081, F.S.

The bill creates, amends, and reorganizes current definitions in s. 812.081(1), F.S. The bill amends the current third degree felony for theft of a trade secret to simplify language and move the offense from level 1 to level 3 on the offense severity chart.

The bill also creates a new second degree felony for trafficking in trade secrets. A person who traffics in, or attempts to traffic in, trade secrets commits the offense. Trafficking in trade secrets is a level 5 offense on the offense severity ranking chart.

The bill adds that, if a person commits either of the felony offenses described above with the intent to benefit a foreign government, foreign agent, or foreign instrumentality, the offense felony is reclassified as one degree higher, and the reclassified offense is increased one level on the offense severity ranking chart.

A court must order restitution if a person is convicted of violating s. 812.081, F.S., and the restitution must include the value of the benefit derived from the offense. The value of the benefit derived from the offense includes any expenses for research and design and other costs of reproducing the trade secret which the person has avoided by committing the offense. The bill also creates a civil cause of action for a victim of trade secret theft. The victim is entitled to injunctive relief and, where an injunction is not equitable, the victim is entitled to royalties.

The bill creates a defense to criminal and civil liability for a person who confidentially discloses a trade secret to an attorney, law enforcement officer, or government official, for purposes of reporting or investigating an offense. A disclosure made under seal in a legal proceeding is also protected.

The bill may have a positive indeterminate (i.e. unquantifiable increase) prison bed impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

II. Present Situation:

Trade Secrets

Section 812.081, F.S., defines a "trade secret" as information[1] used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided in statute, and adopted by Florida courts,[2] requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.[3]

Section 812.081(2), F.S., makes it a third degree felony[4] for a person to deprive or withhold from the owner the control of a trade secret or to intentionally misappropriate a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. It is not a defense, if a person returned or intended to return the article stolen, embezzled, or copied.[5]

What is Corporate (or Economic) Espionage?

According to the Federal Bureau of Investigation (FBI), historically, economic espionage has targeted defense-related and high-tech industries. But recent FBI cases have shown that no industry, large or small, is immune to the threat. Any company with a proprietary product, process, or idea can be a target; any unprotected trade secret is vulnerable to theft by those who

[1] A trade secret may manifest as "any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof" pursuant to s. 812.081(1)(c), F.S.
[2] *See*, e.g., *Sepro Corp. v. Dep't. of Envt'l. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[3] Section 812.081(1)(c), F.S.
[4] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[5] Section 812.081(3), F.S.

wish to illegally obtain innovations to increase their market share at a victim company's expense.[6] Examples of corporate espionage include:

- A person acting on behalf of himself or herself such as where a dissatisfied employee breaks into company records of his or her employer in order to cause damage to the company; or
- A person acting on behalf of a competitor company, such as where a company hires an employee (or an outside party) to illegally investigate a competitor's business.[7]

Technology-based companies are prone to industrial espionage issues, especially with regards to novel ideas or technology products. For instance, biotechnology companies, software firms, and automobile companies tend to be the target of corporate espionage. Transferring stolen company property or stolen trade secrets can also be considered espionage.[8]

The FBI reports that economic espionage is a problem that costs the American economy hundreds of billions of dollars per year. While it is not a new threat, it is a growing one, and theft attempts by foreign competitors and adversaries are becoming more brazen and varied. These foreign competitors deliberately target economic intelligence in advanced technologies and flourishing U.S. industries.[9]

Foreign Influence Uncovered in University Research Programs

According to a National Institutes of Health (NIH) Advisory Committee report, some foreign governments have initiated systematic programs to unduly influence and capitalize on U.S.-conducted research. Small numbers of scientists have committed serious violations of policies and systems by not disclosing foreign support (i.e., grants), laboratories, or funded faculty positions in other countries. These efforts by foreign governments to obtain a competitive advantage in critical areas of research and innovation at the cost of the research enterprises and those that fund them are few, but serious.[10]

For example, in 2019, four faculty members left the University of Florida (UF) after the university and the National Institutes of Health found possible ties to foreign institutions that may have violated funding and research rules.[11] The NIH first reached out to universities across the nation in August 2018 with a letter that expressed concerns about foreign entities trying to influence U.S. research. The NIH later identified two UF faculty members who may have been

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[6] FBI, What We Investigate, *Counterintelligence, Economic Espionage*, available at https://www.fbi.gov/investigate/counterintelligence (last visited March 5, 2021). *See also* FBI, What We Investigate, Counterintelligence, Economic Espionage, News, Stories, *Trade Secret Theft, Investigation into Theft of Intellectual Property from GE Leads to Two Guilty Pleas*, July 29, 2020, available at https://www.fbi.gov/news/stories/two-guilty-in-theft-of-trade-secrets-from-ge-072920 (last visited Mar. 5, 2021).

[7] LegalMatch, *What is Industrial Espionage?*, available at https://www.legalmatch.com/law-library/article/industrial-espionage-lawyers.html (last visited Mar. 5, 2021).

[8] *Id*.

[9] FBI, What We Investigate, *Counterintelligence, Economic Espionage*, available at https://www.fbi.gov/investigate/counterintelligence (last visited Mar. 5, 2021).

[10] NIH Advisory Committee to the Director (ACD), *ACD Working Group for Foreign Influences on Research Integrity*, December 2018 Report, p. 5, *available at* https://acd.od.nih.gov/documents/presentations/12132018ForeignInfluences_report.pdf (last visited Mar. 4, 2021).

[11] Emily Mavrakis, *UF: Former faculty did not disclose China affiliations*, THE GAINESVILLE SUN, January 22, 2020, *available at* https://www.gainesville.com/news/20200122/uf-former-faculty-did-not-disclose-china-affiliations (last visited Mar. 4, 2021).

connected to foreign entities. Through the university's own assessments, two additional faculty members raised concerns.[12] For example:

- One faculty member ("Faculty 1") had been employed by UF since 1995. In addition to serving as the vice president at a China university since at least 2017, Faculty 1 was the director of an institute at a different Chinese university. While conducting research at UF, Faculty 1 served as the principal investigator for one NIH-funded project. None of Faculty 1's foreign affiliations was reported to UF nor the NIH.
- "Faculty 3" joined UF as a postdoctoral associate in the College of Medicine, and was appointed as a part-time research associate professor in 2012. The researcher focused on virology, gene therapy and traditional Chinese medicine. Faculty 3 was the principal investigator on one NIH-funded project and co-principal investigator for a second project prior to termination. That faculty member received an undisclosed grant from China, had an appointment at a Chinese university since 2017 and received a Chinese Thousand Talents award.[13]

During a meeting of the Florida House Select Committee on the Integrity of Research Institutions, a national security spokesman for the U.S. Department of Justice said in a prepared statement that China is implicated in more than 80 percent of all economic espionage charges brought by the department since 2012.[14]

Federal Law

The Economic Espionage Act of 1996

The Economic Espionage Act of 1996 (EEA) was the first federal law to define[15] and punish the theft or misappropriation of trade secrets. The EEA criminalizes theft of trade secrets and economic espionage, as follows:

- *Theft of trade secrets* means the intentional conversion of a trade secret to the economic benefit of someone other than the owner of the trade secret, with intent or knowledge that the offense will injure the owner.[16] Theft of trade secrets is punishable by up to 10 years in federal prison and specified fines for an individual or a corporation.[17]

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[12] *Id*. The NIH provided UF with more than $208 million in research grant money in 2019.
[13] *Id*.
[14] *Id*. *See also*, Bill Gertz, *'Economic Espionage': Special DOJ unit cracks down on China's illicit activities*, THE WASHINGTON TIMES, January 8, 2020, *available at* https://www.washingtontimes.com/news/2020/jan/8/justice-department-special-china-unit-targets-beij (last visited Mar. 4, 2021).
[15] Under the EEA, a trade secret means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if: the owner thereof has taken reasonable measures to keep such information secret; and the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public. 18 U.S.C. 1839.
[16] 18 U.S.C. 1832.
[17] An individual may be fined up to $250,000 or twice the value of the loss or gain associated with the offense, and a corporation may be fined up to $5 million, twice the value of the loss or gain associated with the offense, or three times the value of the stolen trade secret. 18 U.S.C. 1832(a), 3571(c). Here and elsewhere, 18 U.S.C. 3571(d) provides as a general matter that the maximum for a criminal fine of any federal criminal offense is the greater of the standard amount set for the particular offense (e.g., $250,000 for individuals convicted of a felony) or twice the gain or loss resulting from the offense.

- *Economic espionage* refers to theft of a trade secret with the intent or knowledge that such theft will benefit a foreign government, foreign instrumentality, or foreign agent.[18] Economic espionage is punishable by up to 15 years in federal prison and specified fines for an individual or corporation.[19]

The EEA requires a sentencing court to order restitution, provides that property derived from, or used to facilitate, commission of the offense may be subject to confiscation under either civil or criminal forfeiture procedures, and the court may issue an order to protect the confidentiality of a trade secret during prosecution and the government may appeal its failure to do so.

Defend Trade Secrets Act

The Defend Trade Secrets Act of 2016[20] (DTSA) amended the remedies available under the EEA by establishing additional remedies for theft of a trade secret or corporate espionage, including, but not limited to, the following:

- The Attorney General may sue for injunctive relief.
- A trade secret's owner may bring a private civil action for damages, equitable and injunctive, court costs, and attorney fees.
- A civil seizure mechanism is available as a preventative measure prior to a formal finding that a trade secret has been misappropriated.
- The court may require affirmative actions be taken to protect the trade secret.
- In exceptional circumstances rendering an injunction inequitable, the court may condition future use of a trade secret on payment of a reasonable royalty for no longer than the period of time for which such use could have been prohibited.[21]

Because the DTSA does not preempt existing state trade secret law, a trade secret owner may choose to pursue a civil action for an offense in state or federal court.

III. Effect of Proposed Changes:

The bill creates the "Combating Corporate Espionage in Florida Act" in s. 812.081, F.S.

Definitions

The bill creates the following new definitions in s. 812.081(1), F.S.:

- "Endeavor" means to attempt or try.
- "Foreign agent" means any officer, employee, proxy, servant, delegate, or representative of a foreign government.
- "Foreign instrumentality" means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government.

[18] 18 U.S.C. 1831(a).
[19] An individual may be fined up to $5 million or twice the value of the loss or gain associated with the offense, and a corporation may be fined up to $10 million, twice the value of the loss or gain associated with the offense, or three times the value of the stolen trade secret. 18 U.S.C. 1831(a).
[20] 18 U.S.C. 1836.
[21] *Id*.

- "Obtain or use" has the same meaning as provided in s. 812.012(3), F.S.;[22] and
- "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- "Traffic" has the same meaning as provided in s. 812.012(8), F.S.[23]

The bill amends the definition of "trade secret" to specify that a trade secret may be in tangible or intangible form; and is a trade secret regardless of whether or how it is stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.

The bill repeals definitions of the terms "article," "representing," and "copy."

Criminal Offenses Related to Trade Secrets

The bill amends the current third degree felony related to trade secrets to create the offense of Theft of a Trade Secret. The offense of theft of a trade secret is committed when a person willfully and without authorization obtains or uses a trade secret, or endeavors to obtain or use a trade secret, whether temporarily or permanently, if the person:

- Deprives or withholds the control or benefit of a trade secret; or
- Appropriates a trade secret for his or her own use, or for use by a person not entitled to the trade secret.

The bill creates a new second degree felony[24] offense of Trafficking in Trade Secrets. The offense is committed when a person traffics in, or endeavors to traffic in, trade secrets.

Reclassification of Offenses

If a person commits the felony offenses described above, the bill reclassifies these crimes one felony degree higher should he or she commit the offense with the intent to benefit a foreign government, foreign agent, or a foreign instrumentality.

Sentencing

The bill moves the third degree felony offense amended to become Theft of a Trade Secret from a Level 1 offense to a Level 3 offense on the offense severity ranking chart. The effect of this move is that the offender will be assessed more points when computing the sentence score.

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[22] Section 812.012(3), F.S., defines the term "obtains or uses" to mean any manner of:

- Taking or exercising control over property.
- Making any unauthorized use, disposition, or transfer of property.
- Obtaining property by fraud, willful misrepresentation of a future act, or false promise.
- Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or other conduct similar in nature.

[23] Section 812.012(8), F.S., defines the term "traffic" to mean to sell, transfer, distribute, dispense, or otherwise dispose of property; or to buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.

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

The bill places the new second degree offense of Trafficking in Trade Secrets at level 5 on the offense severity ranking chart.

Where either of these offense are reclassified to one felony degree higher, the offense is also increased one level on the offense severity ranking chart.

Restitution, Injunctive Relief, Civil Action

The bill adds the requirement that the sentencing court must order restitution if a person is convicted of either offense. The restitution must include the value of the benefit derived from the offense. The value of the benefit derived from the offense includes any expenses for research and design and other costs of reproducing the trade secret that the person has avoided by committing the offense.

The bill also creates civil causes of action for the victim of theft or trafficking in a trade secret. The victim may seek an injunction against continued improper use of the trade secret. In the injunction, the court may require the defendant to take affirmative steps to protect the trade secret. Where exceptional circumstances render an injunction inequitable, the court may require payment of royalties to the victim, which must last no longer than time such use of the trade secret could have been protected by law.

Defense

The bill creates two defenses to criminal or civil liability for theft of a trade secret or trafficking in trade secrets:

- A disclosure of a trade secret made confidentially to an attorney, a law enforcement officer, or any other federal, state, or local government official for the purpose of reporting or investigating a suspected violation of law.
- A disclosure of a trade secret made in a document filed under seal in a civil action.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of article VII, section 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed CS/SB 1378. However, since the bill creates a new third degree felony and provides for the reclassification of certain offenses in specified instances, it will likely have a positive indeterminate (i.e., unquantifiable increase) in prison bed impact on the Department of Corrections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.081, and 921.0022.

IX. Additional Information:

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

CS by Judiciary on March 15, 2021:
The committee substitute:

- Changed the name of the act to the "Combating Corporate Espionage in Florida Act."
- Added new defined terms "endeavor," "foreign agent," and "foreign instrumentality"; and added repeals of currently defined terms "article," "copy," and "representing."

- Changed the definition of "trade secret" to include all forms of possible trade secret.
- Modified the offense of obtaining or using a trade secret by renaming it as theft of a trade secret, clarifying language, and increasing the offense level from a level 1 to level 3 offense.
- Replaced the new third degree felony related to receiving or buying a trade secret with a new second degree felony of trafficking in trade secrets, placing it at level 5 in the offense severity chart. Like the offense of obtaining or using a trade secret, the offense of trafficking in trade secrets is reclassified as one felony degree higher and one level higher on the offense severity chart if committed with the intent to benefit a foreign government, a foreign agent or foreign instrumentality.
- Added a new civil cause of action to enjoin the continued improper use of a trade secret or to pay royalties if exceptional circumstances warrant.
- Added limited defenses to criminal and civil liability.

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 Judiciary; and Senator Bradley

590-02871-21 20211378c1

A bill to be entitled

An act relating to corporate espionage; providing a short title; amending s. 812.081, F.S.; revising definitions; prohibiting theft of a trade secret; prohibiting trafficking in trade secrets; providing criminal penalties; reclassifying the criminal penalty and increasing the offense severity ranking for an offense committed with specified intent; requiring a court to order specified restitution for a violation; providing for civil actions for violations; providing an exception to criminal and civil liability for certain disclosures; amending s. 921.0022, F.S.; conforming provisions to changes made by the act; ranking the severity of offenses; providing an effective date.

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

Section 1. This act may be cited as the "Combating Corporate Espionage in Florida Act."

Section 2. Section 812.081, Florida Statutes, is amended to read:

812.081 Theft of or trafficking in trade secrets; ~~theft, embezzlement; unlawful copying;~~ definitions; penalties; providing to foreign entities; restitution ~~penalty~~.—

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

(a) "Endeavor" means to attempt or to try.

(b) "Foreign agent" means any officer, employee, proxy, servant, delegate, or representative of a foreign government.

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(c) "Foreign instrumentality" means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government.

(d) "Obtain or use" has the same meaning as provided in s. 812.012(3).

(e) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~(a) "Article" means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.~~

~~(b) "Representing" means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.~~

(f) ~~(c)~~ "Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement

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thereof, whether tangible or intangible, and regardless of whether or how it is stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;

2. Of value;

3. For use or in use by the business; and

4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(g) "Traffic" has the same meaning as provided in s. 812.012(8).

~~(d) "Copy" means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.~~

(2) It is unlawful for a ~~Any~~ person to willfully and without authorization obtain or use, or to endeavor to obtain or use, a trade secret ~~who,~~ with the intent to either temporarily or permanently:

(a) Deprive or withhold from the owner thereof the control or benefit of a trade secret;~~,~~ or ~~with an intent to~~

(b) Appropriate a trade secret to his or her own use or to the use of another person not entitled to the trade secret.~~, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret~~

A person who violates this subsection commits theft of a trade secret, a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(3) A person who traffics in, or endeavors to traffic in, a trade secret that he or she knows or should know was obtained or used without authorization commits trafficking in trade secrets, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Whenever a person is charged with a violation of this section which was committed with the intent to benefit a foreign government, a foreign agent, or a foreign instrumentality, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of theft of a trade secret, from a felony of the third degree to felony of the second degree.

(b) In the case of trafficking in trade secrets, from a felony of the second degree to a felony of the first degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 of the offense committed.

(5) A court shall order a person convicted of violating this section to pay restitution, which shall include the value of the benefit derived from the offense, including any expenses for research and design and other costs of reproducing the trade secret that the person has avoided by committing the offense.

(6) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the unlawfully obtained or used trade secret ~~article so stolen, embezzled, or copied~~ is not a defense.

(7) A person who owns a trade secret that is unlawfully obtained or used may bring a civil action to enjoin the continued improper use of such trade secret, and a court may require affirmative actions to protect the trade secret. When exceptional circumstances render an injunction inequitable, the court may condition future use of the trade secret on the payment of a reasonable royalty for no longer than the period of time for which such use could have been prohibited.

(8) A person may not be held criminally or civilly liable under this section for the disclosure of a trade secret when such disclosure is:

(a) Made confidentially to an attorney, a law enforcement officer, or any other federal, state, or local government official for the purpose of reporting or investigating a suspected violation of law; or

(b) Made in a complaint or other document filed under seal in a lawsuit or other proceeding.

Section 3. Paragraphs (a), (c), and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking

chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount $1,000 or more but less than $20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or

		sell registration license plates or validation stickers.
322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
322.212(5)(a)	3rd	False application for driver license or identification card.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value $1,000 or more.

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517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
713.69	3rd	Tenant removes property upon which lien has accrued, value $1,000 or more.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
~~812.081(2)~~	~~3rd~~	~~Unlawfully makes or causes to be made a reproduction of a trade secret.~~
815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.

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826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.

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847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any

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other person to intercept, any wire or oral communication.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.

319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine

		turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a

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		report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults

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		firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
812.081(2)	3rd	Theft of a trade secret.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.

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817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.

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838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1.,

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		(2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent

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		material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.

316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is

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		suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	3rd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.

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626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at $750 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
<u>812.081(3)</u>	<u>2nd</u>	<u>Trafficking in trade secrets.</u>
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.

817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

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825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with

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		violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver

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		cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

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893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 4. This act shall take effect October 1, 2021.

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SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 18, 2021

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 1378 be placed on the agenda for the Committee on Rules at your earliest convenience. The bill amends Florida's existing trade secrets statute to ensure better enforcement and increases the penalty for the theft of intellectual property when committed to benefit a foreign government. Florida industry, universities, and research institutions have been increasingly targeted by foreign nations and others who seek to steal intellectual property. The bill is an effort to address this growing issue in our state.

Thank you for your consideration and please let me know if I can provide additional information.

Sincerely,

Jennifer Bradley

cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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/HB 9
INTRODUCER:	Judiciary Committee and Representative Zika and others
SUBJECT:	Protecting Consumers Against Pandemic-related Fraud
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Phelps	RC	**Favorable**

I. Summary:

CS/HB 9 provides that it is a third degree felony to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information relating to the characteristics, authenticity, effectiveness, or availability of personal protective equipment in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain or receive any money or other valuable consideration.

The bill also provides that it is a third degree felony to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information regarding the availability of or access to a vaccine for COVID-19 or a vaccine for any other pandemic disease in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain another person's personal identification information, or to obtain or receive any money or other valuable consideration.

A second or subsequent violation of the previously-described offenses is a second degree felony. Prosecution for either offense may be brought on behalf of the state by any state attorney or by the statewide prosecutor. Further, if the Attorney General reasonably believes that a person has committed either offense, the Attorney General may institute a civil action for the violation or to prevent the violation. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.

The bill also amends the offense severity level ranking chart of the Criminal Punishment Code to rank the new offenses.

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

COVID-19

A pandemic is an "[e]vent in which a disease spreads across several countries and affects a large number of people."[1] The most severe pandemic in recent history occurred in 1918 from a strain of the H1N1 influenza virus (H1N1) with genes of avian origin, and killed approximately 50 million people worldwide.[2] Prior to 2019, the most recent pandemic occurred in 2009 when a new strain of H1N1 caused the "swine flu," killing between 151,700 and 575,400 people worldwide during the first year it circulated.[3]

Coronaviruses are a family of viruses that can cause upper-respiratory tract illnesses. In the past, small outbreaks of coronaviruses have occurred in the United States (U.S.), including an outbreak of the SARS coronavirus in November 2002, and the MERS coronavirus in September 2012. Most recently, in December 2019, an outbreak of a new strain of coronavirus, called Severe Acute Respiratory Syndrome Coronavirus 2, emerged in China. The disease caused by this strain of the coronavirus, coronavirus disease 2019 (COVID-19), quickly spread worldwide.[4] COVID-19 causes a wide range of symptoms including fever, cough, difficulty breathing, fatigue, loss of taste or smell, sore throat, and congestion or runny nose. Older adults and people who have severe underlying medical conditions like heart or lung disease or diabetes seem to be at higher risk for developing more serious complications from COVID-19 illness.[5]

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[1] *COVID-19 (Identifying the source of the outbreak)* (July 1, 2020), Centers for Disease Control and Prevention, available at https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/about-epidemiology/identifying-source-outbreak.html#:~:text=Pandemic%3A%20Event%20in%20which,large%20number%20of%20people (last visited March 22, 2021).

[2] *Influenza (Flu) (1918 Pandemic (H1N1 virus))*, (March 20, 2019), Centers for Disease Control and Prevention, available at https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html (last visited March 22, 2021).

[3] *Influenza (Flu) (2009 H1N1 Pandemic (H1N1pdm09 virus))* (June 11, 2019), Centers for Disease Control and Prevention, available at https://www.cdc.gov/flu/pandemic-resources/2009-h1n1-pandemic.html (last visited March 22, 2021).

[4] *Coronaviruses*, National Institute of Allergy and Infectious Diseases, available at https://www.niaid.nih.gov/diseases-conditions/coronaviruses (last visited March 22, 2021); *Naming the coronavirus disease (COVID-19) and the virus that causes it*, World Health Organization, available at https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it (last visited March 22, 2021).

[5] *COVID-19 (Symptoms of Coronavirus)* (Feb. 22, 2021), Centers for Disease Control and Prevention, available at https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html (last visited March 22, 2021).

The U.S. reported its first known case of COVID-19 in January 2020,[6] and its first known death in February 2020.[7] In March 2020, Florida reported its first known COVID-19 case and death.[8] On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.[9]

In response to the COVID-19 pandemic, the federal government initiated "Operation Warp Speed" and a partnership was formed among the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC), the National Institutes of Health, the Biomedical Advanced Research and Development Authority, and the Department of Defense. These agencies and entities began to strategize how to accelerate the development, manufacture, and distribution of COVID-19 countermeasures, including vaccines, therapeutics, and diagnostics.[10]

The CDC issued social distancing guidelines and instructions for wearing face coverings.[11] In an effort to limit the spread of COVID-19, Florida Governor DeSantis issued a series of executive orders[12] declaring a public health emergency.[13] Florida also listed personal protective equipment, sanitizing and disinfecting supplies, and COVID-19 test kits as essential commodities.[14]

Personal Protective Equipment

"Personal protective equipment" (PPE) refers to protective clothing, helmets, gloves, face shields, goggles, facemasks, respirators, or other equipment designed to protect a person from injury or the spread of infection or illness. PPE is commonly used in health care settings to act as a barrier between infectious materials such as viral and bacterial contaminants and a person's skin, mouth, nose, or eyes, to block transmission of contaminants from blood, bodily fluids, or

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[6] Michelle L. Holshue, M.P.H., *First case of 2019 novel coronavirus in the United States* (March 5, 2020), N Engl J Med 2020; 382:929-936, available at https://www.nejm.org/doi/full/10.1056/NEJMoa2001191 (last visited March 22, 2021).
[7] *Washington state reports first COVID–19 death* (Feb. 29, 2020), Centers for Disease Control and Prevention, available at https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html (last visited March 22, 2021).
[8] Steve Patrick, *From 1st cases to 1.9 million: 1 year of COVID-19 in Florida* (March 1, 2021), News4JAX, available at https://www.news4jax.com/news/florida/2021/03/01/from-1st-cases-to-19-million-1-year-of-covid-19-in-florida/ (last visited March 22, 2021).
[9] *WHO Director-General's opening remarks at the media briefing on COVID–19* (March 11, 2020), World Health Organization, available at https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (last visited March 22, 2021).
[10] *Fact Sheet: Explaining Operation Warp Speed*, U.S. Department of Health & Human Services, available at https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus-lpha/pdf/fact-sheet-operation-warp-speed.pdf (last visited March 22, 2021).
[11] *COVID-19* (*Social Distancing)* (Nov. 17, 2020), Centers for Disease Control and Prevention, available at https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html (last visited March 22 2021).
[12] *See 2020 Executive Orders*, Office of the Governor, available at https://www.flgov.com/2020-executive-orders/ (last visited March 22, 2021).
[13] Fla. Exec. Order No. 20-51 (March 1, 2020), Office of the Governor, available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf (last visited March 22, 2021).
[14] *COVID-19 Resources to Stay Informed*, Office of the Attorney General, available at http://www.myfloridalegal.com/covid19 (last visited March 22, 2021).

respiratory secretions. PPE is also used to protect patients who are at high risk for contracting infections brought in by visitors and healthcare workers.[15]

The COVID-19 pandemic increased the need for PPE for healthcare workers, patients, and the general public, resulting in PPE shortages nationwide. Some healthcare facilities were unable to access appropriate PPE, forcing them to identify alternative means to protect healthcare workers and provide adequate patient care.[16]

According to the Department of Homeland Security, more than 19,000 new websites selling PPE emerged as COVID-19 began to spread in the U.S., resulting in numerous reports of sites taking orders, accepting payment, and failing to deliver products.[17] In April 2020, a Georgia man was arrested after making a series of fraudulent misrepresentations to secure $750 million from the Department of Veterans Affairs for 125 million facemasks and other PPE, knowing he was unable to fulfill the orders.[18] In January 2021, a Philadelphia man was arrested after fraudulently claiming to be a PPE provider and entering into agreements for over $700 million to provide PPE to the City of New York.[19]

Florida's Attorney General (AG) has issued numerous consumer alerts warning Floridians about emerging COVID-19 related scams, including one in May 2020, urging Floridians to be on the lookout for fraudulent websites purporting to sell PPE.[20] As of December 2020, the Better Business Bureau had received 96 complaints in Florida related to COVID-19.[21]

COVID-19 Vaccine

In December 2020, the Food and Drug Administration (FDA) granted Pfizer/BioNTech's and Moderna's COVID-19 vaccines emergency use authorization.[22] On February 27, 2021, the FDA

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[15] *Personal Protective Equipment for Infection Control* (Feb. 10, 2021), U.S. Food and Drug Administration, available at https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/personal-protective-equipment-infection-control (last visited March 22, 2021).
[16] *Strategies for Optimizing PPE Supplies During Shortages*, COCA Now, Centers for Disease Control and Prevention, available at https://emergency.cdc.gov/newsletters/coca/010521.htm (last visited March 22, 2021).
[17] *Consumer Alert: New Websites Selling PPE Take Money, Don't Deliver Gear* (May 14, 2020), Office of the Attorney General, available at http://www.myfloridalegal.com/newsrel.nsf/newsreleases/DD06CDD09BE8587B85258568004EC790 (last visited March 22, 2021).
[18] Johnny Diaz and Aimee Ortiz, *Man Charged in Scheme to Sell 125 Million Nonexistent Masks* (Apr. 11, 2020), The New York Times, available at https://www.nytimes.com/2020/04/11/us/coronavirus-face-mask-fraud-christopher-parris.html (last visited March 22, 2021).
[19] Philadelphia Man Arrested for COVID-19 PPE Fraud (Jan. 20, 2021), U.S. Attorney's Office, District of New Jersey, available at https://www.justice.gov/usao-nj/pr/philadelphia-man-arrested-covid-19-ppe-fraud (last visited March 22, 2021).
[20] *VIDEO CONSUMER ALERT: New Websites Selling PPE Take Money, Don't Deliver Gear* (May 14, 2021), Office of the Attorney General available at http://www.myfloridalegal.com/newsrel.nsf/newsreleases/DD06CDD09BE8587B85258568004EC790 (last visited March 22, 2021).
[21] Merris Badcock, *COVID-19 Vaccine Scams at Center of New Crime-Fighting Effort* (Dec. 7, 2020), ClickOrlando.com (Graham Media Group), available at https://www.clickorlando.com/news/local/2020/12/08/covid-19-vaccine-scams-at-center-of-new-crime-fighting-effort/ (last visited March 22, 2021).
[22] *Pfizer-BioNTech COVID-19 Vaccine*, (Feb. 3, 2021), U.S. Food and Drug Administration, available at https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccine (last visited March 22, 2021). Emergency use authorization is a mechanism for facilitating the availability and use of medical countermeasures, such as vaccines, during public health emergencies. *See Emergency Use Authorization for*

granted emergency use authorization to Janssen Biotech Inc., a Janssen Pharmaceutical Company of Johnson & Johnson, to distribute the Janssen COVID-19 vaccine in the United States.[23]

Governor DeSantis recently issued an executive order, effective March 9, 2021, which updates an earlier issued executive order on vaccine administration.[24] This updated order provides that, during this first phase of vaccine administration, all providers administering any COVID-19 vaccine shall only vaccinate the following populations:

- Long-term care facility residents and staff;
- Persons 60 years of age and older;
- Health care personnel with direct patient contact;
- K-12 school employees 50 years of age and older;
- Sworn law enforcement officers 50 years of age and older; and
- Firefighters 50 years of age and older.[25]

The executive order further provides that all individuals authorized by law to administer COVID-19 vaccinations may vaccinate persons determined by a physician to be extremely vulnerable to COVID-19. Such physician determinations shall include a statement that the patient meets the defined eligibility criteria established by a form prescribed by the Florida Department of Health.[26]

Theft

A person commits theft when he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property;[27] or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[28]

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender's prior history of theft convictions or the type of property stolen. The offense

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Vaccines Explained, (Nov. 20, 2020), U.S. Food and Drug Administration, https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained (last visited March 22, 2021).

[23] *FDA Issues Emergency Use Authorization for Third COVID-19 Vaccine* (Feb. 27, 2021), U.S. Food and Drug Administration, available at https://www.fda.gov/news-events/press-announcements/fda-issues-emergency-use-authorization-third-covid-19-vaccine (last visited March 22, 2021). The first shipment of that vaccine arrived in Florida on March 4, 2021. *First shipment of Johnson & Johnson vaccine arrives in Florida, DeSantis to address distribution Friday afternoon* (March 5, 2021), ABC7 (WWSB) (Sarasota, Fl.), available at https://www.mysuncoast.com/2021/03/05/first-shipment-johnson-johnson-vaccine-arrives-florida/ (last visited March 22, 2021).

[24] Fla. Exec. Order No. 21-62 (March 9, 2021), Office of the Governor, available at https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-62.pdf (last visited March 22, 2021).

[25] *Id.*

[26] *Id.*

[27] Section 812.014(1)(a), F.S

[28] Section 812.014(1)(b), F.S.

levels for theft crimes based on property value range from a second degree misdemeanor[29] to a first degree felony.[30] Enhanced penalty provisions are also provided for certain theft offenses committed after a declaration of an emergency by the Governor that are facilitated by conditions arising from that emergency.[31]

Fraudulent Practices

Chapter 817, F.S., prohibits fraudulent practices against individuals, corporations, and governments, including, in relevant part:

- Providing misleading advertisements (first or second degree misdemeanor);[32]
- Misleading solicitation of payments (second degree misdemeanor fine);[33]
- Obtaining property by fraudulent promise to furnish inside information (third degree felony);[34] and
- Unlawful possession of the personal identification information of another person (first degree misdemeanor or third degree felony).[35]

Criminal Use of Personal Identification Information

Section 817.568, F.S., prohibits the criminal use of another person's personal identification information (PII).[36] PII is a name or number that may be used, alone or in conjunction with any other information, to identify a specific person. Section 817.568(1)(f), F.S., lists several examples of PII, including:

- A name;
- An address;
- Contact information, such as a telephone number or email address;
- A social security number;
- A date of birth;
- A mother's maiden name;
- An official state-issued or federally-issued driver license or identification number;
- Another identification number, such as an alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank, credit, or debit card number;
- 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;

[29] A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to $500. Sections 775.082 and 775.083, F.S.
[30] A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.
[31] *See* s. 812.014, F.S.
[32] Sections 817.06, 817.44, and 817.45, F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to $1,000 fine. Sections 775.082 and 775.083, F.S.
[33] Section 817.061, F.S. A second degree misdemeanor fine is a fine of up to $500. Section 775.083, F.S.
[34] Section 817.11, F.S. A third degree felony is punishable by up to five years in state prison and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[35] Section 817.5685, F.S.
[36] Section 817.568, F.S.

- Medical records;
- Telecommunication identifying information or access device; or
- Any other number or information that can be used to access a person's financial resources.

Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, another person's PII without that person's consent, commits the offense of fraudulent use of personal identification information, a third degree felony. However, the offense level and potential sanctions[37] increase for a violation, based on the dollar amount of the benefit or value received by an offender, the dollar amount of the injury or fraud perpetrated on a victim, the number of victims from which an offender takes PII, the age or status of the victim or victims, and the offender's relationship to the victim.[38]

Florida does not specifically criminalize fraud relating to vaccine scams intended to obtain money or personal identification information from another person or fraudulently offering for sale or advertising PPE. While some COVID-19 or other pandemic scams may be prosecuted under current law, other fraudulent scams may not qualify as a crime and stopping the fraudulent activity may be difficult.

The Attorney General and Statewide Prosecutor

The Attorney General may institute a civil action for a violation, or to prevent a violation, of certain activities. For example, the Attorney General may institute a civil action to:

- Stop a violation of, or prevent a violation of, certain voter registration and ballot initiative laws;[39]
- Seek declaratory or injunctive relief against an entity violating federal immigration policies;[40]
- Maintain an action for injunctive relief against any person or entity violating the Environmental Protection Act;[41]
- Enjoin any person who has violated, is violating, or is otherwise likely to violate any portion of the Florida Deceptive and Unfair Trade Practices Act;[42] and
- Seek damages, injunctive relief, or specified civil penalties against a person or group the Attorney General has reasonable cause to believe has engaged in a pattern or practice of discrimination as defined by the laws of this state.[43]

The Office of Statewide Prosecution (OSP) within the Department of Legal Affairs is authorized to investigate and prosecute an offense listed in s. 16.56, F.S., which is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial

[37] Several offenses include a mandatory minimum sentence. *See* ss. 817.568(2)(b)–(c), 817.568(3), and 817.568(8)(b)–(c), F.S.
[38] *See* s. 817.568(2)-(11), F.S.
[39] *See* ss. 97.0575(4) and 100.371(8), F.S.
[40] Section 908.107(2), F.S.
[41] Section 403.412(2)(a), F.S.
[42] Sections 501.201-213, F.S.
[43] Section 760.021, F.S.

circuits.[44] The OSP may also be authorized to prosecute an offense by another statute. For example, s. 817.568, F.S. (criminal use of personal identification information), authorizes the statewide prosecutor to prosecute violations of that statute.[45]

Criminal Punishment Code

The Criminal Punishment Code[46] (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).[47] Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity 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.[48] Absent mitigation,[49] 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.[50]

III. Effect of Proposed Changes:

The bill creates s. 817.418, F.S., which provides that it is a third degree felony to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information relating to the characteristics, authenticity, effectiveness, or availability of personal protective equipment in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain or receive any money or other valuable consideration.

The bill also creates s. 817.504, F.S., which provides that it is a third degree felony to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information regarding the availability of or access to a vaccine for COVID-19 or a vaccine for any other pandemic disease in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain another person's personal identification information, or to obtain or receive any money or other valuable consideration.

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[44] Section 16.56(1), F.S.
[45] Section 817.568(16), F.S.
[46] 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.
[47] Offenses are ranked either in the offense severity level ranking chart in s. 921.0022, F.S., or by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.
[48] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.
[49] 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.
[50] If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

A second or subsequent violation of the previously-described offenses is a second degree felony.[51] Prosecution for either offense may be brought on behalf of the state by any state attorney or by the statewide prosecutor. Further, if the Attorney General reasonably believes that a person has committed either offense, the Attorney General may institute a civil action for the violation or to prevent the violation. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate relief.

The bill also amends the offense severity level ranking chart of the Code to rank the offenses as follows:

- Offering for sale or advertising personal protective equipment with intent to defraud (third degree felony) is a Level 7 offense;
- Offering or advertising a vaccine with intent to defraud (third degree felony) is a Level 7 offense);
- Offering for sale or advertising personal protective equipment with intent to defraud; second or subsequent offense (second degree felony) is a Level 8 offense; and
- Offering or advertising a vaccine with intent to defraud; second or subsequent offense (second degree felony) is a Level 8 offense.

All of these offenses would score a prison sentence as the lowest permissible sentence under the Code.

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.

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

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).[52]

The EDR provided the following information relevant to its preliminary estimate:

> Per Office of Attorney General, they have heard from 115 complainants against 83 unique subjects regarding potential scams/frauds related to selling or advertising personal protective equipment. They have also heard from 22 complainants against 20 unique subjects regarding offering or advertising a coronavirus vaccine with the intent to defraud. Per U.S. Immigration and Customs Enforcement, Operation Stolen Promise has made 225 criminal arrests so far associated with fraud related to the coronavirus. It is not known how many of these arrests fit the definitions outlined in this bill, nor is it known how many of these arrests were made in connection with fraud activity in Florida. It is possible that a certain number of these offenders fall under Federal jurisdiction, thus limiting the pool of those potentially entering state prison. Furthermore, many of those offenders might already be eligible under the theft statute, s. 812.014, F.S., or Chapter 817, relating to fraudulent practices, though the severity of the act might not reach the incarceration rate of a Level 7, 3rd degree felony (FY 18-19: 47.4%, FY 19-20: 42.9%) or a Level 8, 2nd degree felony (FY 18-19: 65.8%, FY 19-20: 63.6%). Finally, it is not known how long such illicit activity will persist, especially once the vaccine has inoculated the population.[53]

VI. Technical Deficiencies:

None.

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[52] The EDR's preliminary estimate is on file with the Senate Committee on Rules.
[53] *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.0022 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 817.418 and 817.504.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

A bill to be entitled

An act relating to protecting consumers against pandemic-related fraud; creating s. 817.418, F.S.; defining the term "personal protective equipment"; prohibiting dissemination of false or misleading information relating to personal protective equipment under certain circumstances with specified intent; providing criminal penalties; authorizing a state attorney or the statewide prosecutor to prosecute a violation; authorizing the Attorney General to seek civil remedies; creating s. 817.504, F.S.; prohibiting dissemination of false or misleading vaccine information under certain circumstances with specified intent; providing criminal penalties; authorizing a state attorney or the statewide prosecutor to prosecute a violation; authorizing the Attorney General to seek civil remedies; amending s. 921.0022, F.S.; ranking offenses created by the act on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. Section 817.418, Florida Statutes, is created to read:

817.418 Offering for sale or advertising personal protective equipment with intent to defraud.—

(1) As used in this section, the term "personal protective equipment" means protective clothing or equipment, including, but not limited to, face masks, face shields, gloves, goggles, gowns, helmets, or respirators designed to protect a person from infectious materials, communicable disease, or other illness.

(2) It is unlawful for any person to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information relating to the characteristics, authenticity, effectiveness, or availability of personal protective equipment in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain or receive any money or other valuable consideration.

(a) Except as provided in paragraph (b), a person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who commits a second or subsequent violation of this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Prosecution for a violation of this section may be brought on behalf of the state by any state attorney or by the statewide prosecutor.

(4) If the Attorney General reasonably believes that a person has committed a violation of this section, the Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.

Section 2. Section 817.504, Florida Statutes, is created to read:

817.504 Offering or advertising a vaccine with intent to defraud.—

(1) It is unlawful for any person to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information regarding the availability of, or access to, a vaccine for the novel coronavirus "COVID-19" or a vaccine for any other pandemic disease in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain another person's personal identification information, as defined in s. 817.568(1)(f), or to obtain or receive any money or other valuable consideration.

(a) Except as provided in paragraph (b), a person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who commits a second or subsequent violation

of this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Prosecution for a violation of this section may be brought on behalf of the state by any state attorney or by the statewide prosecutor.

(3) If the Attorney General reasonably believes that a person has committed a violation of this section, the Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.

Section 3. Paragraphs (g) and (h) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily

		injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than

		$50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.

463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.

484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial

		transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the

		act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.

784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.

787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or

		attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.

796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.

810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand

		theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.

817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.418(2)(a)	3rd	Offering for sale or advertising personal protective equipment with intent to defraud.

817.504(1)(a)	3rd	Offering or advertising a vaccine with intent to defraud.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under

		16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.

847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.)

			within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
195			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5., within 1,000 feet of property used for religious services or a specified business site.
196			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
197			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
198			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
199			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
200			
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
201			
	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 50 grams or more, less than 100 grams.
202			
	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
203			
	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
204			
	893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14

		grams.
893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5

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		kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.135 (1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
893.135 (1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
893.135 (1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.

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896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(6)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(7)	1st	Knowing forgery of prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial

		transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or

		give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual

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

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

810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.418(2)(b)	2nd	Offering for sale or advertising personal protective equipment with intent to

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		defraud; second or subsequent offense.
817.504(1)(b)	2nd	Offering or advertising a vaccine with intent to defraud; second or subsequent offense.
817.505(4)(c)	1st	Patient brokering; 20 or more patients.
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(a)	2nd	Filing false lien or other

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		unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $50,000 or more.

837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 100 grams or more, less than 300 grams.
893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
893.135	1st	Trafficking in fentanyl, 14

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(1)(c)4.b.(II)		grams or more, less than 28 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, 200 grams or more, less than 400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, 5 kilograms or more, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, 28 grams or more, less than 200 grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135	1st	Trafficking in 1,4-Butanediol,

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(1)(j)1.b.		5 kilograms or more, less than 10 kilograms.
893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
893.135 (1)(m)2.c.	1st	Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.
893.135 (1)(n)2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

Section 4. This act shall take effect upon becoming a law.

CS/HB 9 – Protecting Consumers Against Pandemic-related Fraud (Similar SB 1608)

This bill also creates s. 817.418, F.S., defining "personal protective equipment" and stating that "it is unlawful for any person to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information relating to the characteristics, authenticity, effectiveness, or availability of personal protective equipment in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain or receive any money or other valuable consideration." A **Level 7, 3rd degree felony** is created for such fraudulent acts, and a **Level 8, 2nd degree felony** is created for when "a person…commits a second or subsequent violation."

This bill also creates s. 817.504, F.S., stating that "it is unlawful for any person to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information regarding the availability of, or access to, a vaccine for the novel coronavirus "COVID-19" or a vaccine for any other pandemic disease in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain another person's personal identification information…or to obtain or receive any money or other valuable consideration." A **Level 7, 3rd degree felony** is created for such fraudulent acts, and a **Level 8, 2nd degree felony** is created for when "a person…commits a second or subsequent violation."

Per Office of Attorney General, they have heard from 115 complainants against 83 unique subjects regarding potential scams/frauds related to selling or advertising personal protective equipment. They have also heard from 22 complainants against 20 unique subjects regarding offering or advertising a coronavirus vaccine with the intent to defraud. Per U.S. Immigration and Customs Enforcement, Operation Stolen Promise has made 225 criminal arrests so far associated with fraud related to the coronavirus. It is not known how many of these arrests fit the definitions outlined in this bill, nor is it known how many of these arrests were made in connection with fraud activity in Florida. It is possible that a certain number of these offenders fall under Federal jurisdiction, thus limiting the pool of those potentially entering state prison. Furthermore, many of those offenders might already be eligible under the theft statute, s. 812.014, F.S., or Chapter 817, relating to fraudulent practices, though the severity of the act might not reach the incarceration rate of a Level 7, 3rd degree felony (FY 18-19: 47.4%, FY 19-20: 42.9%) or a Level 8, 2nd degree felony (FY 18-19: 65.8%, FY 19-20: 63.6%). Finally, it is not known how long such illicit activity will persist, especially once the vaccine has inoculated the population.

EDR PROPOSED ESTIMATE: Positive Indeterminate

Requested by: Senate

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/2021
Meeting Date

HB 9
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Protecting Consumers Against Pandemic-related Fraud

Name Pamela Burch Fort

Job Title

Address 104 South Monroe Street
Street

Phone 850-425-1344

Tallahassee FL 32301
City *State* *Zip*

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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:	SB 7000
INTRODUCER:	Health Policy Committee
SUBJECT:	OGSR/Nurse Licensure Compact
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Rossitto-Van Winkle	Brown		**HP Submitted as Committee Bill**
1.	McVaney	McVaney	GO	**Favorable**
2.	Rossitto-Van Winkle	Phelps	RC	**Favorable**

I. Summary:

SB 7000 amends s. 464.0096, F.S., to save from repeal the following current public records and meeting exemptions relating to the Expanded Nurse License Compact (eNLC or compact):

- The personal identifying information of a registered nurse (RN) or licensed practical nurse (LPN),[1] holding a multistate license under the eNLC, other than the nurse's name, licensure status, or licensure number, that is held by the Department of Health (DOH) or the Board of Nursing (BON), and was received from the Coordinated Licensure Information System (CLIS);
- The recordings, minutes, and records generated during an exempt meeting of the Interstate Commission of Nurse Licensure Compact Administrators (the commission); and
- A public meeting, or portion of a meeting, of the commission at which matters specifically exempt from disclosure under the Florida Constitution, or under federal or state statute, are discussed.

The public record and meeting exemptions in s. 464.0096, F.S., are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2021, unless reviewed and reenacted by the Legislature. This bill removes the scheduled repeal of these exemptions.

The bill takes effect on October 1, 2021.

[1] The eNLC can apply to an LPN or a "vocational nurse" (VN), which is substantially equivalent to an LPN in some states. The compact's language often refers to such a practitioner as an "LPN/VN." This analysis refers to such practitioners as LPNs.

II. Present Situation:

Access to Public Records and Meetings – Generally

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[2] The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.[3] The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.[4]

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act[5] guarantees every person's right to inspect and copy any state or local government public record.[6] The Sunshine Law[7] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.[8]

The Legislature may create an exemption to public records or open meetings requirements.[9] An exemption must specifically state the public necessity justifying the exemption[10] and must be tailored to accomplish the stated purpose of the law.[11]

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[2] FLA. CONST. art. I, s. 24(a).
[3] FLA. CONST. art. I, s. 24(b).
[4] *Id.*
[5] Chapter 119, F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.
[7] Section 286.011, F.S.
[8] Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.
[9] FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).
[10] FLA. CONST. art. I, s. 24(c).
[11] FLA. CONST. art. I, s. 24(c).

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person and that providing access to public records is a duty of each agency.[12]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[13] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[14]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[15] A violation of the Public Records Act may result in civil or criminal liability.[16]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[17] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[18]

General exemptions from the public records requirements are contained in the Public Records Act.[19] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[20]

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

[13] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

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

[15] Section 119.07(1)(a), F.S.

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

[17] FLA. CONST. art. I, s. 24(c).

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

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

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

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.[21] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[22]

Executive Agency Meetings – The Sunshine Law

The Florida Constitution provides that the public has the right to access government meetings. The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.[23] The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.[24] The Sunshine Law[25] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.[26]

The Legislature may create an exemption to public open meetings requirements.[27] An exemption must specifically state the public necessity justifying the exemption[28] and must be tailored to accomplish the stated purpose of the law.[29]

Open Government Sunset Review Act

The Act[30] prescribes a legislative review process for newly created or substantially amended[31] public records or open meetings exemptions, with specified exceptions.[32] It requires the

[21] *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).
[22] *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).
[23] FLA. CONST. art. I, s. 24(b).
[24] FLA. CONST. art. I, s. 24(b).
[25] Section 286.011, F.S.
[26] Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.
[27] FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).
[28] FLA. CONST. art. I, s. 24(c).
[29] FLA. CONST. art. I, s. 24(c).
[30] Section 119.15, F.S.
[31] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings, as well as records. Section 119.15(4)(b), F.S.
[32] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Courts System are not subject to the Open Government Sunset Review Act.

automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment unless the Legislature reenacts the exemption.[33]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[34] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program and such administration would be significantly impaired without the exemption;[35]
- The exemption protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[36] or
- The exemption protects information of a confidential nature concerning entities, such as trade or business secrets.[37]

The Act also requires specified questions to be considered during the review process.[38] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[39] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, then records created before the sunset date may not be made public unless otherwise provided by law.[40]

[33] Section 119.15(3), F.S.
[34] Section 119.15(6)(b), F.S.
[35] Section 119.15(6)(b)1., F.S.
[36] Section 119.15(6)(b)2., F.S.
[37] Section 119.15(6)(b)3., F.S.
[38] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[39] *See generally* s. 119.15, F.S.
[40] Section 119.15(7), F.S.

Practitioner Profiles

Pursuant to s. 456.041, F.S., the DOH operates a database of Florida's healthcare practitioners, including nurses. The practitioner profile database is online and searchable.[41] A profile may include information that is public record and relates to the practitioner's profession.[42] Practitioners and the DOH are required to update profiles.[43] Information exempt from public disclosure and submitted by another governmental entity that the DOH uses for practitioner profiles continues to maintain its exempt status.[44]

Expanded Nurse Licensure Compact (eNLC)

The original Nurse Licensure Compact was designed as a multistate agreement establishing a mutual recognition system between states for the licensure of an RN or LPN. Prior to the compact's enactment, the National Council of State Boards of Nursing (NCSBN) produced a model bill for state legislatures to enact in order for their respective states to join the compact.[45]

The compact was revised and expanded prior to adoption in Florida. These revisions resulted in the eNLC, which is set out in s. 464.0095, F.S., the enactment of which authorized Florida to enter into the eNLC. Florida's entry took effect on January 19, 2018, upon the enactment of the eNLC[46] by a total of 26 states.[47]

A nurse who is issued a multi-state license from a state that is party to the eNLC is permitted to practice in any state that is also party to the compact. A nurse with a multistate license privilege must comply with the practice laws of the state in which he or she is practicing or where the patient is located. A party state may continue to issue a single-state license and authorize practice only in that state.

The eNLC permits a state to take adverse action against the multistate licensure privilege of any nurse practicing in that state. The home state has the exclusive authority to take adverse action

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[41] Section 456.041(8), F.S. Department of Health Practitioner Profile Search, *available at* https://appsmqa.doh.state.fl.us/MQASearchServices/HealthCareProviders/PractitionerProfileSearch (last visited Jan. 20, 2021).
[42] Section 456.041(7), F.S.
[43] Section 456.042, F.S.
[44] Section 456.046, F.S.
[45] National Council of State Boards of Nursing (NCSBN), *Licensure Compacts*, *available at* https://www.ncsbn.org/compacts.htm (last visited Jan. 20, 2021). The NCSBN arose out of the recognition that in order to guard the safety of the public, the organization involved in the regulation of nurses needed to be a separate entity from the American Nurses Association (ANA) and Council on State Boards of Nursing, which represents professional nurses. NCSBN's membership is now comprised of boards of nursing and other nursing regulatory bodies that are charged with the responsibility of providing regulatory excellence for public health, safety and welfare, and protecting the public by ensuring that safe and competent nursing care is provided by licensed nurses. The NCSBN is the vehicle through which these entities act and counsel together on matters of common interest.
[46] National Council of State Boards of Nursing, *Enhanced Nurse Licensure Compact (eNLC) Interstate Commission Sets Jan. 19, 2018, as Implementation Date for eNLC, available at* https://www.ncsbn.org (last visited Jan. 20, 2021). The eNLC, is an updated version of the original NLC. The Interstate Commission of Nurse Licensure Compact Administrators set Friday, January 19, 2018, as the implementation date for the enhanced Nurse Licensure Compact (eNLC). There are 26 states in the eNLC.
[47] Section 464.0095, art. X, F.S.

against the home state license, including revocation and suspension. The eNLC requires all participating states to report to the CLIS all adverse actions taken against a nurse's license or multistate licensure practice privilege, any current significant investigative information, and denials of information.

The DOH collects and provides the following information to the NCSBN CLIS system on all RNs and LPN/VNs with eNLC multistate licenses practicing in Florida:

- NCSBN ID;
- Name (first, middle, last and suffix);
- Mother's maiden name (needed for exam purposes);
- Date of birth;
- Social security number;
- Race;
- Home phone number;
- Work phone number;
- Mailing address;
- License number;
- License rank (RN, PN);
- License status;
- Basis for licensure (e.g. exam or endorsement);
- Current license issue date;
- License expiration date;
- Education program code;
- Education program name;
- Degree;
- Education program address information;
- Graduation date;
- Date of exam;
- Original date of licensure;
- Date license record was last updated;
- Death status indicator;
- Date of death;
- Other names the licensee has been known by;
- License status effective date;
- Level of education;
- License discipline indicator;
- eNLC indicator (multistate or single state);
- eNLC state of primary residence indicator;
- Administrative complaint filed indicator;
- Endorsed from Puerto Rico indicator;
- Null and void indicator; and
- Military active indicator.[48]

[48] Health Policy Committee, The Florida Senate, Fla. Bd. of Nursing, Dept. of Health, *Open Government Sunset Review of s. 464.0096(3), Section 119.15, F.S., Questionnaire*, response (Oct. 5, 2020) (on file with the Senate Health Policy Committee).

The following other state and federal laws also protect the personal identifying information of a RN or LPN/VN holding a multistate license under the eNLC:

- 42 CFR Part 2 – Drug, Alcohol and Mental Health;
- 45 CFR 160, 162, and 164 – Health Insurance Portability and Accountability Act (HIPAA);
- Section 456.013(13), Florida Statutes – General Licensing Provisions;
- Section 456.014, Florida Statutes – Public Inspection of Information; and
- Section 119.071, Florida Statutes – General Exemptions from Public Record Inspection.[49]

All party states may access the CLIS to see licensure and disciplinary information for nurses licensed in the party states. The CLIS includes a nurse's personal identifying information, licensure classification information and statuses, public emergency and final disciplinary action information, and status information about multistate licensure privileges from all party states. A party state may designate the information it contributes to the CLIS as confidential, prohibiting its disclosure to nonparty states. State licensing boards must report disciplinary information, significant investigative information, and denials of applications to the CLIS promptly.

The eNLC established the commission to oversee the operation of the eNLC. The head of each state's licensing board, or his or her designee, must serve as the state's delegate to the commission. The eNLC grants the commission authority to promulgate uniform rules relating to the implementation and administration of eNLC. The commission may also take action against a party state if a party state fails to meet its obligations under the eNLC, including termination of membership after exhausting all other means of compliance.[50]

All commission meetings are open to the public and must be publicly noticed. Both meetings and hearings for proposed rules must be noticed at least 60 days prior to each meeting on the eNLC's website and on the website of each party state's licensing board or published in the publication in which each state would otherwise post proposed rules. The compact also provides for public comment opportunities through both oral and written testimony. Closed meetings are permitted if the commission is discussing:

- A party state's noncompliance with its obligations under the compact;
- The employment, compensation, discipline, or other personnel matters, practices, or procedures related to a specific employee or other matters related to the commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;

[49] *Id*.
[50] Section 464.0095, art. VII, F.S.

- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigating compliance with the eNLC; or
- Matters specifically exempted from disclosure by federal or state law.[51]

The commission must keep comprehensive minutes of matters discussed in its meetings and provide a full and accurate summary of actions taken, and the reasons. Minutes of a closed meeting will be sealed; however, such minutes may be released pursuant to a majority vote of the commission or an order of a court of competent jurisdiction.[52]

Staff Survey Regarding Exemptions Under Review

Legislative staff received a response from the DOH to a joint survey of the House Oversight, Transparency and Public Management Subcommittee and the Senate Committee on Health Policy regarding the public records submitted to the DOH under the eNLC and the public meeting exemptions of the commission under s. 464.0096, F.S., for the following:

- The personal identifying information of an RN or LPN/VN holding a multistate license under the eNLC, other than the nurse's name, licensure status, or licensure number, that is held by the DOH or the BON, and was received from the CLIS;
- The recordings, minutes, and records generated during an exempt meeting of the commission; and
- The public meeting, or portion of a meeting, of the commission at which matters specifically exempt from disclosure under the Florida Constitution, or under federal or state statute, are discussed.

The DOH recommends retaining the exemption in its current form as it is a uniform law.

III. Effect of Proposed Changes:

The bill saves from repeal the public records and public meeting exemptions in s. 464.0096, F.S., relating to the following:

- The personal identifying information of RNs and LPNs holding a multistate license under the eNLC, other than the nurse's name, licensure status, or licensure number, that is held by the DOH or the Board of Nursing (BON), and was received from the CLIS;
- The recordings, minutes, and records generated during an exempt meeting of the commission; and
- The public meeting, or portion of a meeting, at which the commission discusses matters specifically exempt from disclosure under the Florida Constitution, or under federal or state statute, are discussed.

The bill takes effect on October 1, 2021.

[51] Section 464.0095, art. VII, (2),(e), F.S.
[52] Section 464.0095, art. VII (2),(f), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemptions. The bill continues the current public records and public meeting exemptions under sunset review. The bill does not expand the exemptions or create new ones. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records and public meeting exemptions under sunset review. The bill does not expand these exemptions or create new ones. Therefore, the bill does not require a public necessity statement.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records and public meeting requirements to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts the information, records and commission meetings, or portion of a meeting, at which matters specifically exempted from disclosure under the Florida Constitution, or under federal or state statute, are discussed. So unless the state that originally reported the information to the CLIS authorizes the disclosure of such information by law, such information may only be disclosed by the department to the extent permitted by the reporting state's law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 464.0096 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Health Policy

588-01375-21 20217000__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 464.0096, F.S., which provides an exemption from public record requirements for certain personal identifying information of nurses in the Nurse Licensure Compact and from public record and meeting requirements for certain meetings or portions of meetings and certain records held by the Interstate Commission of Nurse Licensure Compact Administrators; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Section 464.0096, Florida Statutes, is amended to read:

464.0096 Nurse Licensure Compact; public records and meetings exemptions.—

(1) A nurse's personal identifying information, other than the nurse's name, licensure status, or licensure number, obtained from the coordinated licensure information system, as defined in s. 464.0095, and held by the department or the board is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the coordinated licensure information system authorizes the disclosure of such information by law. Under such circumstances, the information may only be disclosed to the extent permitted by the reporting state's law.

(2)(a) A meeting or portion of a meeting of the Interstate

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

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Commission of Nurse Licensure Compact Administrators established under s. 464.0095 at which matters specifically exempted from disclosure by federal or state statute are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Recordings, minutes, and records generated during an exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR MANNY DIAZ, JR.
36th District

COMMITTEES:
Health Policy Chair
Appropriations Subcommittee on Education Vice Chair
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Commerce and Tourism
Rules

March 18, 2021

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request Senate Bill Number Open Government Sunset Review Act Amending 464.0096 be placed on the next committee agenda.

Senate Bill 7000 removes the sunset provisions from a public records and public meeting exception relating to Florida's membership in the nurse licensure compact and saves the exemptions from repeal. The Nurse Licensure Compact was designed as a multistate agreement to establish a system of mutual recognition between states from the licensure of registered nurses and licensed practical nurses. SB 7000 removes the sunset provision from the statute and saves the exceptions from repeal.

Sincerely appreciate your support.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:
❒ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
❒ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

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

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

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 7012
INTRODUCER:	Criminal Justice Committee
SUBJECT:	OGSR/Criminal History Information of Juveniles
DATE:	March 23, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stokes	Jones		**CJ Submitted as Committee Bill**
1.	McVaney	McVaney	GO	**Favorable**
2.	Stokes	Phelps	RC	**Favorable**

I. Summary:

SB 7012 amends ss. 943.053 and 985.04, F.S., to save from repeal the current exemptions from public records disclosure for certain criminal history information of juveniles.

The original public necessity statement for the bill states that it is in the best interest of the public that individuals with juvenile misdemeanor records be given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.

Sections 943.053 and 985.04, F.S., relating to criminal history information of juveniles, are subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from the repeal through reenactment by the Legislature. This bill removes this repeal language.

This bill does not appear to have a fiscal impact on state or local governments.

This bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies

[1] FLA. CONST. art. I, s. 24(a).

to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state

[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

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.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]

[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

The Criminal Justice Information Program

The Criminal Justice Information Program (CJIP) is a program established under the Florida Department of Law Enforcement (FDLE).[27] The CJIP must:

- Establish and maintain a communication system capable of transmitting criminal justice information to and between criminal justice agencies.
- Establish, implement, and maintain a statewide automated biometric identification system.
- Initiate a crime information system that is responsible for preparing and disseminating reports, providing data, and developing and maintaining an offender based transaction system.
- Adopt rules to implement, administer, manage, maintain, and use the automated biometric system and uniform offense reports and arrest reports.
- Establish, implement, and maintain a Domestic and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies.
- Establish, implement, and maintain a system for transmitting to and between criminal justice agencies information about writs of bodily attachment issues.

[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Sections 20.201(2)(b) and 943.05, F.S.

- In certain circumstances, retain fingerprints submitted by criminal and noncriminal justice agencies to the department for a criminal history background screening as provided by rule and enter the fingerprints in the statewide automated biometric identification system.[28]

Public Records Exemption for Criminal History Information Relating to a Juvenile

In 2016, the Legislature amended ss. 943.053, and 985.04, F.S., to make the same criminal history information of juveniles confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[29] Section 943.053(3)(b), F.S., provides that criminal history information relating to juveniles compiled by the CJIP is confidential and exempt, except when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court.

Section 943.053(3)(c), F.S., provides that criminal history information relating to juveniles, even if confidential and exempt, must be available to:
- Criminal justice agencies for criminal justice purposes;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates provided that such a person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(6)[30] or 943.059(6), F.S.[31]

Except as otherwise provided, all information obtained under ch. 985, F.S., relating to juveniles, is confidential and exempt.[32] Section 985.04(2), F.S., provides that the name, photograph, address, and crime or arrest report of a juvenile is not confidential and exempt when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court. Prior to the amendment in 2016, the statute's language did not protect, or make confidential and exempt, the records of a juvenile who had committed three

[28] Section 943.05, F.S.
[29] Section 943.053(3)(b), F.S.; Chapter 2016-78, L.O.F.
[30] Section 943.0585(6), F.S., provides that a person may not deny or fail to acknowledge an arrest that has been expunged if he or she is: a candidate for employment with a criminal justice agency; a defendant in a criminal prosecution; currently or subsequently petitions for relief under this section, s. 943.0583, F.S., or s. 943.059, F.S.; is a candidate for admission to the Florida Bar; is seeking to be employed or licensed by or to contract with specified agencies or entities; is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.
[31] Section 943.059(6), F.S., provides that a criminal history record of a minor or adult which is sealed by a court is confidential and exempt and is only available to the following: the subject of the record; the subjects attorney; criminal justice agencies; judges in the state courts system; specified agencies for their respective licensing access authorization and employment purposes. Additionally, a person may not deny or fail to acknowledge an arrest that has been expunged if he or she is: a candidate for employment with a criminal justice agency; a defendant in a criminal prosecution; currently or subsequently petitions for relief under this section, s. 943.0583, F.S., or s. 943.059, F.S.; is a candidate for admission to the Florida Bar; is seeking to be employed or licensed by or to contract with specified agencies or entities; is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check; is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S; or is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm.
[32] Section 985.04(1), F.S.

or more misdemeanor offenses. The 2016 bill expanded the public records exemption by removing this exception, thereby making these records confidential and exempt.

Sections 943.053(3)(b) and 985.04(2), F.S., are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

> [I]t is a public necessity that the criminal history information of juveniles, who have not been adjudicated delinquent of a felony or who have been found only to have committed misdemeanor offenses and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution under ss. 985.04 and 943.053, Florida Statutes. Many individuals who have either completed their sanctions and received treatment or who were never charged in the juvenile justice system have found it difficult to obtain employment. The presence of an arrest or a misdemeanor record in these individuals' juvenile past and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program creates an unnecessary barrier to becoming productive members of society, thus frustrating the rehabilitative purpose of the juvenile system. The Legislature found that it is in the best interest of the public that individuals with juvenile misdemeanor records are given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.[33]

Staff Surveys/Meeting with FDLE Regarding Exemptions Under Review

During the 2020 interim, Senate and House professional staff contacted the FDLE regarding the exemption under review relating to criminal history information relating to juveniles compiled by the CJIP in s. 943.053, F.S. The FDLE requested to reenact the public records exemption and had no suggested amendments.

During the interim, surveys were sent to the Department of Juvenile Justice, county sheriff departments, and local police departments regarding the exemption under review in s. 985.04, F.S. All of the responding agencies that reported collecting the criminal history information of juveniles requested to reenact the public records exemption. An overwhelming majority requested to reenact the exemption as is. Only two responding requested reenactment with changes.

[33] Chapter 2016-78, L.O.F.

III. Effect of Proposed Changes:

The bill amends ss. 943.053 and 985.04, F.S., to save from repeal the current exemptions from public records disclosure for certain criminal history information of juveniles.

This bill deletes the scheduled repeal of the current public records exemptions for the criminal history information of juveniles.

This bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemptions under sunset review; it does not expand this exemption or create a new exemption. Therefore, the bill does not require a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the exemptions is to protect the release of juvenile misdemeanor records and certain criminal history information relating to juveniles. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.053 and 985.04.

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 the Committee on Criminal Justice

591-01974-21 20217012__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 943.053 and 985.04, F.S.; abrogating the scheduled repeals of public records exemptions relating to criminal history information of juveniles; providing an effective date.

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

Section 1. Subsection (3) of section 943.053, Florida Statutes, is amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)(a) Criminal history information relating to an adult, compiled by the Criminal Justice Information Program from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge. After providing the program with all known personal identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement.

(b)~~1.~~ Criminal history information relating to a juvenile compiled by the Criminal Justice Information Program from intrastate sources shall be released as provided in this section. Such information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless such juvenile has been:

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

591-01974-21 20217012__

1.~~a.~~ Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

2.~~b.~~ Charged with a violation of law which, if committed by an adult, would be a felony;

3.~~c.~~ Found to have committed an offense which, if committed by an adult, would be a felony; or

4.~~d.~~ Transferred to adult court pursuant to part X of chapter 985,

and provided the criminal history record has not been expunged or sealed under any law applicable to such record.

~~2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(c)1. Criminal history information relating to juveniles, including criminal history information consisting in whole or in part of information that is confidential and exempt under paragraph (b), shall be available to:

a. A criminal justice agency for criminal justice purposes on a priority basis and free of charge;

b. The person to whom the record relates, or his or her attorney;

c. The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or

d. An agency or entity specified in s. 943.0585(6) or s.

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

943.059(6), for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

2. After providing the program with all known personal identifying information, the criminal history information relating to a juvenile which is not confidential and exempt under this subsection may be released to the private sector and noncriminal justice agencies not specified in s. 943.0585(6) or s. 943.059(6) in the same manner as provided in paragraph (a). Criminal history information relating to a juvenile which is not confidential and exempt under this subsection is the entire criminal history information relating to a juvenile who satisfies any of the criteria listed in subparagraphs (b)1.-4. ~~sub-subparagraphs (b)1.a.-d.~~, except for any portion of such juvenile's criminal history record which has been expunged or sealed under any law applicable to such record.

3. All criminal history information relating to juveniles, other than that provided to criminal justice agencies for criminal justice purposes, shall be provided upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement.

(d) The fee for access to criminal history information by the private sector or a noncriminal justice agency shall be assessed without regard to the size or category of criminal history record information requested.

(e) The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is $24 per name submitted, except that the fee for the guardian ad litem

program and vendors of the Department of Children and Families, the Department of Juvenile Justice, the Agency for Persons with Disabilities, and the Department of Elderly Affairs shall be $8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services shall be $15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, shall be $18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

Section 2. Subsection (2) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

(2)(a)~~1.~~ Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

1.~~a.~~ Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

2.~~b.~~ Charged with a violation of law which, if committed by an adult, would be a felony;

3.~~c.~~ Found to have committed an offense which, if committed by an adult, would be a felony; or

4.~~d.~~ Transferred to adult court pursuant to part X of this chapter,

are not considered confidential and exempt from s. 119.07(1)

solely because of the child's age.

(b)~~2.~~ A public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs of a child which are not confidential and exempt under this section or otherwise restricted from publication by law; however, this paragraph ~~subparagraph~~ does not restrict public access to records as provided by s. 119.07.

~~(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 3. This act shall take effect October 1, 2021.

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 3/25/2021 9:00:39 AM
Ends: 3/25/2021 11:40:06 AM **Length: 02:39:28**

9:00:38 AM Meeting called to order
9:00:42 AM Roll call - quorum is present
9:01:14 AM Chair Passidomo gives instructions to public at civic center regarding COVID procedures
9:02:17 AM CS/CS/SB 76 Property Insurance by Senator Boyd
9:02:32 AM Resume debate from last week's meeting on March 18, 2021
9:02:44 AM Senator Brandes yields the floor for debate
9:03:11 AM Senator Farmer in debate
9:14:57 AM Senator Gibson in debate
9:17:45 AM Senator Thurston in debate
9:21:00 AM Senator Brandes in debate
9:26:48 AM Senator Thurston with further comments in debate
9:27:22 AM Senator Boyd closes on the bill
9:32:47 AM Roll call: CS/CS/SB 76 is reported favorably
9:33:59 AM SB 728 Credit for Reinsurance by Senator Broxson
9:34:27 AM Senator Broxson explains the bill
9:34:31 AM No questions
9:34:47 AM Public appearance: Allison Hess Sitte, Office of Insurance Regulation, waives in support
9:35:19 AM Senator Farmer in debate
9:36:52 AM Senator Broxson waives close
9:36:56 AM Roll call: SB 728 is reported favorably
9:37:35 AM CS/SB 354 Restitution by Senator Harrell
9:37:40 AM Senator Harrell explains the bill
9:39:55 AM Amendment 682316 by Senator Harrell
9:39:58 AM Senator Harrell explains the amendment
9:40:18 AM No questions; No public appearances; No debate on the amendment
9:40:36 AM Amendment barcode# 682316 is adopted.
9:40:40 AM Back on the bill as amended
9:40:49 AM Questions: Senator Thurston regarding changes in the bill language
9:41:14 AM Senator Harrell responds
9:41:48 AM Senator Thurston with follow-up question on recommendations
9:42:06 AM Senator Harrell responds
9:42:13 AM Senator Thurston question regarding Public Defenders Association
9:42:34 AM Senator Harrell responds
9:42:43 AM Senator Gibson with a question on restitution and market value
9:43:13 AM Senator Harrell responds
9:43:33 AM No public appearance
9:43:43 AM No debate
9:43:48 AM Senator Harrell closes on the bill
9:44:06 AM Roll call: CS/SB 354 is reported as favorable
9:45:09 AM CS/SB 170 Podiatric Medicine by Senator Hooper
9:45:28 AM Senator Hooper explains the bill
9:45:34 AM No questions
9:46:05 AM Public appearance:
9:46:09 AM Steve Winn Executive Director for Florida Osteopathic Medical Association waives in support
9:46:20 AM Jason D. Winn, Florida Podiatric Medical Association, waives in support
9:46:22 AM Chris Hansen, Florida Podiatric Medical Association, waives in support
9:46:43 AM No debate
9:46:46 AM Senator Hooper waives close
9:46:52 AM Roll Call: CS/SB 170 is reported favorably
9:47:30 AM CS/SB 286 Fire Sprinklers by Senator Perry
9:47:50 AM Senator Perry explains the bill
9:47:57 AM No questions

9:48:20 AM Edward Briggs, Director of Government Relations, representing American Fire Sprinkler Association - FL Chapter, waives in support
9:48:25 AM No debate
9:48:33 AM Senator Perry waives close
9:48:35 AM Roll call: CS/SB 286 is reported favorably
9:49:20 AM CS/SB 622 Liens and Bonds by Senator Perry
9:49:25 AM Senator Perry explains the bill
9:49:47 AM No questions
9:50:41 AM Kari Hebrank, FHBA, National Utility Contractors Association, speaks against the bill
9:50:55 AM Melissa Ramba, National Association of Credit Managers, waives in support
9:51:44 AM Warren Husband, Florida Associated General Contractors Council, speaks against the bill
9:54:25 AM French Brown, Real Property Probate Trust Law Section of the Florida Bar, speaking for information
9:55:14 AM No debate
9:55:28 AM Senator Perry closes on the bill
9:55:50 AM Roll call: CS/SB 622 is reported favorably
9:56:32 AM CS/CS/SB 496 Growth Management by Senator Perry
9:57:11 AM Senator Perry explains the bill
9:57:17 AM Amendment barcode# 878280 by Senator Diaz is explained
9:58:15 AM Questions on the amendment: Senator Brandes has property question
9:59:14 AM Senator Diaz responds
9:59:35 AM Senator Powell questions the necessity of the amendment
9:59:58 AM Senator Diaz responds on the timeline
10:00:41 AM Senator Powell with follow up
10:01:20 AM Discussion continues
10:01:24 AM Senator Diaz discusses time
10:01:40 AM Senator Powell follow-up question
10:01:57 AM Senator Diaz answers regarding the timeline
10:02:16 AM No public appearance on the amendment
10:02:23 AM Senator Brandes in debate
10:04:27 AM Senator Farmer in debate
10:05:41 AM Senator Perry comments on the amendment
10:05:52 AM Senator Diaz closes on amendment #878280
10:06:12 AM Amendment barcode# 878280 is adopted
10:06:28 AM Back on the bill as amended
10:06:33 AM Jane West, 1000 Friends of Florida, speaks in opposition to the bill
10:08:03 AM Jessica Lewis, Sierra Club, waives against
10:08:11 AM Diego Esheverri, Americans for Prosperity, waives in support
10:08:33 AM No debate
10:08:49 AM Senator Perry closes on the bill
10:09:14 AM Roll call: CS/CS/CS/SB 496 is reported favorably
10:09:53 AM CS/SB 1088 Modification of the Continuation of Terms of Probation by Senator Rodrigues
10:09:59 AM Senator Rodrigues explains the bill
10:11:11 AM No questions
10:11:19 AM No public appearance
10:11:24 AM No debate
10:11:28 AM Senator Rodrigues waives close
10:11:34 AM Roll call: CS/SB 1088 is reported favorably
10:12:16 AM CS/SB 148 Beverage Law by Senator Bradley is taken up and explained
10:13:46 AM Questions: Senator Brandes with question on purchases
10:14:46 AM Senator Bradley replies
10:15:12 AM Senator Brandes replies
10:15:12 AM Senator Bradley in discussion
10:15:22 AM Senator Bradley with examples of bottle purchases
10:15:42 AM Senator Bradley clarifies
10:16:05 AM Senator Book with question on age of deliverer
10:16:29 AM Senator Bradley refers on delivery statute
10:16:55 AM Senator Book with follow up question on age of delivery persons
10:17:31 AM Senator Bradley responds to clarification of age
10:17:48 AM Senator Book follow up
10:17:54 AM Senator Bradley explains
10:18:01 AM Senator Gibson question on size of establishment
10:18:17 AM Senator Bradley responds regarding specialty of establishment

10:18:29 AM Senator Gibson with follow up on mixed-drink containers
10:19:04 AM Senator Bradley responds on type of container
10:19:42 AM Senator Stargel questions type of delivery of mixed-drink
10:20:19 AM Senator Bradley responds
10:20:23 AM Senator Stargel elaborates further on driver
10:20:47 AM Senator Bradley with follow up information
10:21:02 AM Public appearance: Samantha Padgett, Florida Restaurant & Lodging Association, speaks in support
10:23:41 AM Jake Farmer, Florida Retail Federation, waives in support
10:23:41 AM Jonathan Rees, Anheuser-Busch, waives in support
10:23:43 AM Scott Dick, ABC Fine Wine & Spirits AND Florida Independent Spirits Association, waives in support
10:23:51 AM Christian Camara, Institute for Justice, waives in support
10:23:59 AM Diego Echeverri, Americans for Prosperity, waives in support
10:24:03 AM B.D. Jogerst, Associated Industries of Florida, waives in support
10:24:07 AM Jorge Chamizo, Uber Technologies, waives in support
10:24:33 AM Debate: Senator Stargel in debate on age issue
10:25:13 AM Senator Bradley closes on the bill
10:25:33 AM Roll call: CS/SB 148 is reported favorably
10:26:22 AM CS/CS/SB 228 Notaries Public by Senator Bradley
10:26:28 AM Senator Bradley explains the bill
10:27:24 AM Amendment barcode# 175934 by Senator Bradley
10:27:37 AM Senator Bradley explains the amendment
10:27:41 AM No questions
10:27:42 AM No public appearances
10:27:49 AM Debate none. Senator Bradley waives close
10:27:55 AM Amendment barcode#175934 is adopted
10:28:02 AM Back on the bill as amended
10:28:07 AM No questions
10:28:11 AM Public appearance: Warren Husband, Attorneys' Title Fund Services, LLC, speaking for the bill
10:28:32 AM Kari Hebrank, Southern Title, waives in support
10:28:52 AM No debate
10:28:56 AM Senator Bradley waives close
10:29:00 AM Roll Close CS/CS/CS SB 228 is reported favorably
10:29:43 AM CS/SB 378 Payment for Construction Services by Senator Bradley
10:29:50 AM Senator Bradley explains the bill
10:31:18 AM No questions
10:31:21 AM No public appearance
10:31:30 AM No debate
10:31:35 AM Senator Bradley waives close
10:31:56 AM Roll call: CS/SB 378 is reported favorably
10:32:17 AM CS/SB 920 Liability of Persons Providing Areas for Public Outdoor Recreational Purposes by Senator Bradley
10:32:34 AM Senator Bradley explains the bill
10:32:56 AM Amendments: 887138 by Senator Bradley and SA 755520 are taken up. The SA is explained
10:33:34 AM No questions
10:34:01 AM No public appearance
10:34:06 AM No debate
10:34:14 AM Senator Bradley waives close on the substitute amendment
10:34:17 AM Substitute amendment 755520 is adopted
10:34:31 AM Chair verifies that amendment barcode# 887138 is no longer in order
10:34:49 AM Back on the bill as amended
10:34:56 AM No questions. No public appearance. No debate.
10:35:05 AM Senator Bradley waives close
10:35:12 AM Roll call: CS/SB 920 is reported favorably
10:36:03 AM CS/SB 1378 Corporate Espionage by Senator Bradley
10:36:08 AM Senator Bradley explains the bill
10:36:43 AM No questions
10:37:43 AM No public appearance
10:37:51 AM No debate
10:38:02 AM Senator Bradley waives close
10:38:04 AM Roll call: CS/SB 1378 is reported favorably
10:38:55 AM CS/SB 602 Business Organization by Senator Burgess
10:38:59 AM Senator Burgess explains the bill

10:40:40 AM Chair Passidomo asks a question
10:40:51 AM Senator Burgess responds
10:40:55 AM Aimee Diaz Lyon, Business Laws Section of the Florida Bar, waives in support
10:40:59 AM Jake Farmer, Florida Retain Federation, waives in support
10:41:12 AM Debate: Senator Farmer with comment
10:41:30 AM Senator Burgess waives close
10:41:39 AM Roll call: CS/SB 602 is reported favorably
10:42:10 AM SB 922 Veterans' Preference in Employment by Senator Burgess
10:42:19 AM Senator Burgess explains the bill
10:43:40 AM No questions
10:43:47 AM No public appearance
10:43:55 AM No debate
10:44:07 AM Senator Burgess closes on bill
10:44:16 AM Roll Call: SB 922 is reported favorably
10:44:56 AM SB 952 Water Management Districts by Senator Burgess
10:45:06 AM Senator Burgess explains the bill
10:45:39 AM No questions
10:46:02 AM No public appearance
10:46:08 AM No debate
10:46:14 AM Senator Burgess waives close
10:46:18 AM Roll call: SB 952 is reported favorably
10:46:58 AM SB 7012 OGSR/Criminal History Information of Juveniles presented by Senator Pizzo
10:47:05 AM Senator Pizzo explains the bill
10:47:29 AM No questions
10:47:35 AM No public appearance
10:47:43 AM No debate on bill
10:47:48 AM Senator Pizzo waives close
10:47:53 AM Roll call: SB 7012 is reported favorably
10:48:38 AM SB 82 Sponsorship Identification Disclaimers by Senator Baxley
10:48:48 AM Senator Baxley explains the bill
10:49:19 AM No questions; no public appearance; no debate on the bill
10:49:29 AM Senator Baxley waives close on the bill
10:49:31 AM Roll Call: SB 82 is reported favorably
10:50:12 AM SB 738 Bicycle Operations Regulations by Senator Baxley
10:50:23 AM Senator Baxley explains the bill
10:51:01 AM Amendment barcode 336198 by Senator Brandes
10:51:10 AM Senator Brandes explains the amendment
10:51:23 AM No questions on the amendment
10:52:03 AM No appearance on the amendment
10:52:11 AM No debate
10:52:15 AM Senator Baxley comments on amendment
10:52:18 AM Senator Brandes waives close on amendment
10:52:23 AM Amendment barcode# 336198 is adopted
10:52:30 AM Back on the bill as amended
10:52:34 AM Diego Echeverri, Americans for Prosperity, waives in support
10:52:48 AM No debate
10:52:55 AM Senator Baxley waives close
10:52:57 AM Roll call: CS/SB 738 is reported favorably
10:53:39 AM CS/SB 1046 Arrest Booking Photographs by Senator Bean
10:53:47 AM Senator Bean explains the bill
10:54:28 AM Questions: Senator Powell with question on out of state website
10:55:12 AM Senator Bean responds
10:55:31 AM Blake R. Mathesie, Law Student speaks in support
10:57:30 AM In debate
10:58:32 AM Senator Powell in debate
10:59:22 AM Senator Bean waives close
10:59:48 AM Roll call: SB 1046 is reported favorably
11:00:31 AM CS/CS/SB 1040 Duties of Attorney General by Senator Brodeur
11:00:39 AM Senator Brodeur explains the bill
11:00:58 AM No questions
11:01:43 AM Jake Farmer, Florida Retail Federation, waives in support
11:01:46 AM Daniel Olson , Office of the Attorney General, waives in support

11:02:03 AM No debate
11:02:05 AM Senator Brodeur waives close
11:02:09 AM Roll call: CS/CS/SB 1040 is reported favorably
11:02:44 AM CS/HB 9 Protecting Consumers Against Pandemic Related Fraud presented by Senator Bean
11:03:33 AM Questions: Senator Brandes regarding procedure on pulling a house bill in committee meeting
11:03:37 AM Chair Passidomo responds
11:03:49 AM Senator Brandes in questions
11:04:08 AM Chair Passidomo responds
11:04:16 AM Senator Brandes with a follows up
11:04:48 AM Chair Passidomo responds
11:04:58 AM Senator Brandes further in questions regarding to procedure
11:05:25 AM Chair Passidomo responds
11:05:30 AM Senator Farmer with a question
11:06:00 AM Chair Passidomo responds
11:06:15 AM Senator Farmer follow up question
11:07:02 AM Chair Passidomo responds
11:07:40 AM Senator Farmer with follow up question
11:08:01 AM Chair Passidomo responds
11:08:11 AM Senator Farmer discussion of process
11:08:44 AM Chair Passidomo responds redirect to the bill
11:09:17 AM Questions continue on the bill
11:09:28 AM Senator Brandes question to Senator Bean regarding house bill
11:09:41 AM Senator Bean responds
11:09:51 AM Senator Brandes with follow up question
11:10:08 AM Senator Bean defers question to Rules Chair
11:10:16 AM Chair Passidomo responds.
11:10:25 AM Senator Gibson with question on the bill on the amendment
11:10:57 AM Senator Bean responds to question on amendment
11:11:11 AM Chair recognizes Senator Farmer question on status of a bill committtee reference
11:11:51 AM Chair Passidomo responds
11:12:13 AM Senator Farmer follow up discussion on referencing
11:12:33 AM Rules Chair responds to bill reference and amendments
11:13:26 AM Senator Farmer continues comments
11:14:13 AM Pamela Burch Fort, NAACP Florida State Conference, waives in support
11:14:31 AM Senator Brandes in debate regarding process
11:15:11 AM Senator Farmer in debate
11:16:53 AM Chair Passidomo responds to Senator Farmer
11:17:07 AM Senator Stargel addresses the discussion
11:17:50 AM Senator Farmer comments
11:19:09 AM Senator Thurston in debate
11:19:38 AM Chair Passidomo responds
11:19:40 AM Senator Gibson in debate on penalty in bill
11:20:54 AM Senator Baxley in debate
11:22:12 AM Senator Bean waives close
11:22:13 AM Roll call
11:22:19 AM CS/SB 9 is reported favorably
11:22:59 AM CS/SB 96 Child Welfare by Senator Book is taken up and explained
11:24:26 AM Substitute Amendment 526162 for amendment 335142 by Senator Book is taken up
11:25:38 AM Senator Book explains the substitute amendment
11:25:58 AM No questions on SA
11:26:04 AM No public appearances
11:26:15 AM No debate on SA
11:26:20 AM Senator Book waives close
11:26:25 AM SA barcode# 526162 is adopted
11:26:33 AM Amendment 335142 no longer in order
11:26:43 AM Back on bill as amended
11:26:48 AM No questions
11:26:51 AM Public appearance
11:26:53 AM Sara Clements, Florida Foster and Adoptive Parent Association, waives in support
11:26:58 AM Kate Macfall, State Director of Humane Society of the United States, waives in support
11:27:05 AM Candice Brower Regional Counsel, 1st DCA, representing Offices of Criminal Conflict and Civil Regional Counsel, speaks in support

11:28:21 AM No further public testimony
11:28:22 AM Senator Farmer in debate
11:28:41 AM Senator Book waives close
11:28:45 AM Roll Call: CS/CS/SB 96 is reported favorably
11:29:28 AM CS/CS/SB 626 Juvenile Justice by Senator Bracy
11:29:38 AM Senator Bracy explains the bill
11:30:00 AM No member questions
11:30:07 AM Pamela Burch Fort, NAACP Florida State Conference, waives in support
11:30:12 AM Jorge Chamizo, Florida Association of Criminal Defense Lawyers, waives in support
11:30:19 AM Carrie Boyd, SPLC Action Fund, waives in support
11:30:29 AM Debate
11:30:40 AM Senator Powell in debate
11:31:21 AM Senator Bracy waives close
11:31:32 AM Roll call: CS/CS/SB 626 is reported favorably
11:32:14 AM SB 7000 Nurse Licensure Compact by Health Policy presented by Senator Diaz
11:32:43 AM No questions
11:32:46 AM No public appearance
11:32:51 AM No debate
11:32:55 AM Senator Diaz waives close
11:32:58 AM Roll call: SB 7000 is reported favorably
11:33:33 AM SB 752 Public Defender Duties by Senator Gruters
11:33:39 AM Senator Gruters explains the bill
11:33:54 AM No questions
11:33:58 AM No public appearance
11:34:12 AM No debate
11:34:14 AM Senator Gruters waives close
11:34:17 AM Roll call: SB 752 is reported favorably
11:34:58 AM CS/SB 702 Individual Retirement Accounts by Senator Thurston
11:35:12 AM Senator Thurston explains the bill
11:35:29 AM Questions: Senator Powell with question on proceedings
11:36:11 AM Senator Thurston responds
11:36:23 AM Public appearance
11:37:10 AM Martha Edenfield, The Real Property Probate and Trust Law Section of The Florida Bar, waives in support
11:37:22 AM No debate
11:37:30 AM Senator Thurston waives close
11:37:33 AM Roll call: CS/SB 702 is reported favorably
11:38:06 AM Senators move to show affirmative votes in the record.
11:38:30 AM Senator Stargel on tab 8 CS/SB 354
11:38:40 AM Move that this motion be adopted
11:38:56 AM Senator Baxley SB 626
11:39:11 AM That motion is adopted
11:39:21 AM Senator Diaz Tab 2 SB 82 and Tab 7 CS/SB 286
11:39:25 AM Move that these motions be adopted
11:39:25 AM Senator Albritton Tab 15 SB 728, and Tab 19 SB 922
11:39:25 AM Show this motion to be adopted
11:39:25 AM Senator Thurston to be shown vote yea on Tab 6 CS/CS/SB 228. Show this motion adopted
11:39:26 AM Senator Bracy vote in favor of Tab 2 SB 82. Show this motion to be adopted
11:39:38 AM Senator Gruters shown in favor of Tab 11 and on Tab19
11:39:47 AM Show these motions adopted. No further business.
11:39:59 AM Senator Baxley moves to adjourn. The meeting is adjourned.