Tab 1	**CS/SB 358** by **ED, Berman (CO-INTRODUCERS) Book, Perry**; (Identical to CS/H 01119) Water Safety and Swimming Certification for K-12 Students
Tab 2	**CS/SB 418** by **GO, Burgess**; (Identical to CS/CS/H 00327) Public Records/Persons Provided Public Emergency Shelter
Tab 3	**CS/SB 420** by **JU, Hooper**; (Similar to CS/CS/H 00273) Motor Vehicle Insurance Coverage Exclusions
Tab 4	**CS/SB 490** by **GO, Bracy (CO-INTRODUCERS) Stewart**; (Compare to H 00185) Juneteenth Day
Tab 5	**SB 518** by **Diaz**; (Compare to CS/H 00433) Drones

~~525780~~ A S WD RC, Diaz btw L.38 - 39: 04/16 12:59 PM

Tab 6	**CS/SB 616** by **RC, Gruters**; (Similar to H 00317) Public Accountancy
Tab 7	**CS/CS/SB 716** by **JU, HP, Book**; (Compare to CS/CS/H 00361) Consent for Pelvic Examinations
Tab 8	**CS/CS/SB 768** by **RC, CF, Baxley**; (Similar to CS/CS/H 01063) Administration of Vaccines
Tab 9	**CS/CS/SB 804** by **CA, CF, Harrell**; (Identical to CS/CS/H 00319) Substance Abuse Services
Tab 10	**SB 826** by **Baxley (CO-INTRODUCERS) Harrell**; (Identical to H 00871) Child Protection Teams
Tab 11	**SB 848** by **Powell**; (Identical to H 00483) Electronic Legal Documents
Tab 12	**CS/SB 902** by **RI, Rodrigues**; (Similar to CS/H 00463) Community Association Pools
Tab 13	**CS/SB 950** by **TR, Book**; (Similar to CS/CS/H 00605) Bicycle and Pedestrian Safety
Tab 14	**CS/SB 964** by **RI, Diaz (CO-INTRODUCERS) Taddeo**; (Identical to CS/H 01051) Environmental Compliance Costs
Tab 15	**CS/CS/SB 1060** by **RI, JU, Bradley**; (Similar to CS/CS/H 00891) Limitation of Liability for Voluntary Engineering or Architectural Services
Tab 16	**CS/CS/SB 1070** by **CA, JU, Berman**; (Similar to CS/H 00609) Estates and Trusts
Tab 17	**CS/CS/SB 1080** by **HP, RI, Hutson**; (Similar to CS/CS/H 00987) Tobacco and Nicotine Products
Tab 18	**CS/SB 1234** by **JU, Boyd**; (Compare to CS/H 00371) False Reports of Crimes
Tab 19	**CS/SB 1288** by **JU, Boyd**; (Identical to CS/H 06077) Assets of an Estate in Administration
Tab 20	**CS/SB 1434** by **BI, Wright**; (Similar to CS/1ST ENG/H 00425) Disposition of Unclaimed Property

Tab 21	**SB 1456** by **Rodrigues**; (Identical to CS/H 00311) Public Records/Examination and Assessment Instruments

Tab 22	**SB 1476** by **Brodeur**; (Identical to H 06095) Controlled Substances

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Tab 23	**CS/SB 1934** by **RC, Book (CO-INTRODUCERS) Taddeo**; (Similar to CS/H 01579) Health Care Practitioner Discipline

Tab 24	**CS/CS/CS/SB 1946** by **RC, CA, EN, Polsky (CO-INTRODUCERS) Bean**; (Similar to CS/CS/H 01515) Anchoring Limitation Areas

Tab 25	**CS/SB 7004** by **GO, TR**; (Identical to CS/H 07037) OGSR/Financial Information/Private Entity Applicant

Tab 26	**SB 7014** by **BI**; (Similar to H 07049) OGSR/Office of Insurance Regulation

Tab 27	**SB 7026** by **RI**; (Identical to H 07003) OGSR/Florida State Boxing Commission

Tab 28	**SB 7036** by **AG**; (Identical to H 07007) OGSR/Department of Agriculture and Consumer Services

Tab 29	**SB 7050** by **CA**; OGSR/Unsolicited Proposals

Tab 30	**SB 7066** by **RI**; (Compare to CS/H 01311) Public Records and Public Meetings/Public Service Commission

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Friday, April 16, 2021
TIME: 9:00 a.m.—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301		
1	**CS/SB 358** Education / Berman (Identical CS/H 1119)	Water Safety and Swimming Certification for K-12 Students; Citing this act as the "Edna Mae McGovern Act"; defining the term “water safety”; requiring public schools to provide specified information to certain parents or students, etc. ED 03/30/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 16 Nays 0
2	**CS/SB 418** Governmental Oversight and Accountability / Burgess (Identical CS/CS/H 327)	Public Records/Persons Provided Public Emergency Shelter; Creating an exemption from public records requirements for the addresses and telephone numbers of persons provided public emergency shelter during a storm or catastrophic event and held by the agency that provided the emergency shelter; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. MS 02/16/2021 Favorable GO 04/06/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
3	**CS/SB 420** Judiciary / Hooper (Similar CS/H 273, Compare CS/H 719, CS/CS/S 54)	Motor Vehicle Insurance Coverage Exclusions; Providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; requiring excluded drivers to meet certain requirements for financial responsibility, etc. BI 03/03/2021 Favorable JU 03/09/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 490** Governmental Oversight and Accountability / Bracy (Compare H 185)	Juneteenth Day; Designating Juneteenth Day as a legal holiday; repealing a provision relating to Juneteenth Day; deleting provisions designating Juneteenth Day as a special observance, to conform to changes made by the act, etc. GO 03/17/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 15 Nays 0
5	**SB 518** Diaz (Identical H 433, Compare CS/H 1049, CS/CS/S 44)	Drones; Expanding the authorized uses of drones by a state agency or political subdivision to include the assessment of damage due to natural disasters, etc. MS 03/09/2021 Favorable CA 03/30/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 14 Nays 0
6	**SB 616** Gruters (Similar H 317)	Public Accountancy; Requiring that certain applicants not be licensed in any state or territory in order to be licensed by endorsement; requiring that a majority of the hours required for continuing education include specific content; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status, etc. RI 03/01/2021 Favorable CM 03/15/2021 Favorable RC 04/16/2021 Fav/CS	Fav/CS Yeas 16 Nays 0
7	**CS/CS/SB 716** Judiciary / Health Policy / Book (Compare CS/CS/H 361)	Consent for Pelvic Examinations; Revising the definition of the term “pelvic examination”; revising the circumstances under which a pelvic examination may be performed without consent; providing that certain health care practitioners and students need only obtain written consent for the initial pelvic examination for certain patients under certain circumstances; requiring such written consent form to inform the patient that multiple pelvic examinations may be conducted during the course of care and treatment, etc. HP 03/17/2021 Fav/CS JU 03/29/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 768** Children, Families, and Elder Affairs / Baxley (Similar CS/CS/H 1063, Compare H 459, CS/S 494, S 898)	Administration of Vaccines; Revising the specified immunizations or vaccines that certified pharmacists and registered interns may administer to adults; authorizing certain pharmacists to administer influenza vaccines to individuals 7 years of age or older under certain circumstances, etc. HP 02/17/2021 Favorable CF 03/30/2021 Fav/CS RC 04/16/2021 Fav/CS	Fav/CS Yeas 17 Nays 0
9	**CS/CS/SB 804** Community Affairs / Children, Families, and Elder Affairs / Harrell (Identical CS/CS/H 319)	Substance Abuse Services; Providing criminal penalties for making certain false representations or omissions of material facts when applying for service provider licenses; requiring the Department of Children and Families to suspend a service provider's license under certain circumstances; expanding the applicability of certain exemptions for disqualification to applications for certification of a recovery residence or a recovery residence administrator, respectively; specifying that certain dwellings converted to recovery residences do not have a change of occupancy under the Florida Building Code due to such conversion, etc. CF 03/02/2021 Fav/CS CA 03/24/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 16 Nays 0
10	**SB 826** Baxley (Identical H 871)	Child Protection Teams; Revising the definition of the term "officer, employee, or agent" as it applies to immunity from personal liability in certain actions to include any member of a Child Protection Team established by the Department of Health in certain circumstances, etc. CF 03/09/2021 Favorable JU 03/29/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
11	**SB 848** Powell (Identical H 483)	Electronic Legal Documents; Revising the definition of the term "online notarization"; clarifying that supervising the witnessing of an electronic record by an online notary public is a notarial act; revising the statutory form for an affidavit for acceptance of and reliance upon a power of attorney to reflect means of notarization; revising the form for a petition of summary relief for the sale or transfer of certain property owned by an absentee to reflect means of notarization, etc. CM 03/02/2021 Favorable JU 03/09/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**CS/SB 902** Regulated Industries / Rodrigues (Similar CS/H 463)	Community Association Pools; Exempting certain homeowners' association pools from supervision by the Department of Health; providing exceptions, etc. RI 03/30/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
13	**CS/SB 950** Transportation / Book (Identical CS/H 605)	Bicycle and Pedestrian Safety; Revising and providing requirements for the driver of a motor vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; requiring the Department of Highway Safety and Motor Vehicles to provide an annual awareness and safety campaign regarding certain safety precautions; exempting a motor vehicle driver from certain provisions relating to no-passing zones when overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; making a technical change; revising requirements for vehicles turning at intersections; prohibiting persons riding bicycles in a bicycle lane from riding more than two abreast, etc. TR 03/30/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
14	**CS/SB 964** Regulated Industries / Diaz (Identical CS/H 1051)	Environmental Compliance Costs; Redefining the term "environmental compliance costs" to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements, etc. EN 02/15/2021 Favorable RI 03/01/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 15 Nays 0
15	**CS/CS/SB 1060** Regulated Industries / Judiciary / Bradley (Identical CS/H 891)	Limitation of Liability for Voluntary Engineering or Architectural Services; Defining the term "structures specialist"; exempting engineers, architects, and structures specialists from liability for certain voluntary engineering or architectural services under certain circumstances, etc. JU 03/02/2021 Fav/CS RI 03/16/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**CS/CS/SB 1070** Community Affairs / Judiciary / Berman (Similar CS/H 609)	Estates and Trusts; Requiring the court to allow an officer to elect to post and maintain a certain bond; providing that certain provisions of a will are void upon dissolution of marriage; specifying that a trust director submits to specified personal jurisdiction by accepting appointment as a trust director; creating the "Community Property Trust Act"; providing that certain property held in a community property trust qualifies as homestead property, etc. JU 03/22/2021 Fav/CS CA 03/30/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
17	**CS/CS/SB 1080** Health Policy / Regulated Industries / Hutson (Similar CS/CS/H 987)	Tobacco and Nicotine Products; Revising age limitations relating to mail order, Internet, and remote sales of tobacco products; providing that it is unlawful for persons under 21 years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school during specified hours; preempting the establishment of the minimum age for purchasing and possessing, and the regulation for the marketing, sale, or delivery of, tobacco products to the state; requiring retail nicotine product dealers to acquire a permit, etc. RI 03/09/2021 Fav/CS HP 03/24/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 11 Nays 5
18	**CS/SB 1234** Judiciary / Boyd (Compare CS/H 371)	False Reports of Crimes; Defining the term “public safety agency”; authorizing enhanced fines for the willful making of false reports of crimes under certain circumstances, etc. CJ 03/09/2021 Favorable JU 03/29/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
19	**CS/SB 1288** Judiciary / Boyd (Identical CS/H 6077)	Assets of an Estate in Administration; Deleting a requirement that assets of an estate in administration may be placed in a savings and loan association only if such savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state, etc. JU 03/09/2021 Fav/CS BI 03/16/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	**CS/SB 1434** Banking and Insurance / Wright (Similar CS/H 425)	Disposition of Unclaimed Property; Requiring the Department of Financial Services to provide copies of wills and trusts included in safe-deposit box contents under certain circumstances; requiring specified agreements for certain claims; increasing the threshold required to use a different method of identity verification for electronic claims; requiring the department to adopt forms for an Unclaimed Property Recovery Agreement and an Unclaimed Property Purchase Agreement, etc. BI 03/30/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 15 Nays 0
21	**SB 1456** Rodrigues (Identical CS/H 311)	Public Records/Examination and Assessment Instruments; Expanding an exemption from public records requirements for examination and assessment instruments used for statewide standardized assessments and student progression to include those instruments used for statewide kindergarten screening, youth enrolled in Department of Juvenile Justice programs, limited English proficient students, civic literacy assessments, measuring minority and underrepresented student achievement, and certification of educators and those administered by a Florida College System institution, a state university, or the Department of Education; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. ED 03/30/2021 Favorable GO 04/06/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
22	**SB 1476** Brodeur (Identical H 6095)	Controlled Substances; Removing from Schedule V certain drug products in finished dosage formulation which have been approved by the United States Food and Drug Administration, etc. CJ 03/23/2021 Favorable HP 03/31/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
23	**SB 1934** Book (Compare CS/H 1579)	Health Care Practitioner Discipline; Subjecting health care practitioners to disciplinary action for specified offenses; requiring the Department of Health to issue emergency orders to suspend certain physicians' licenses if they are arrested for committing or attempting, soliciting, or conspiring to commit acts that would constitute violations of specified criminal offenses involving a child; requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to analyze certain laws and rules and their application; requiring all state agencies, upon OPPAGA's request, to assist OPPAGA and provide requested information and data, etc. HP 03/17/2021 Favorable CJ 03/23/2021 Favorable RC 04/16/2021 Fav/CS	Fav/CS Yeas 16 Nays 0
24	**CS/CS/SB 1946** Community Affairs / Environment and Natural Resources / Polsky (Identical CS/CS/H 1515, Compare CS/CS/H 639, CS/S 1086)	Anchoring Limitation Areas; Providing that certain areas are grandfathered-in anchoring limitation areas; authorizing counties to establish anchoring limitation areas that meet certain requirements; specifying size requirements for the anchoring limitation areas; prohibiting vessels from anchoring in such areas for longer than a specified time; requiring the Fish and Wildlife Conservation Commission to initiate rulemaking by a certain date, etc. EN 03/22/2021 Fav/CS CA 03/30/2021 Fav/CS RC 04/16/2021 Fav/CS	Fav/CS Yeas 17 Nays 0
25	**CS/SB 7004** Governmental Oversight and Accountability / Transportation (Similar H 6099, Identical CS/H 7037, S 1004)	OGSR/Financial Information/Private Entity Applicant; Amending a provision relating to an exemption from public records requirements for financial information of a private entity applicant which the Department of Transportation requires as part of a certain application process; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Fav/CS RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
26	**SB 7014** Banking and Insurance (Similar H 7049)	OGSR/Office of Insurance Regulation; Adding the Office of Insurance Consumer Advocate to the list of entities to which the Office of Insurance Regulation may disclose confidential and exempt information; removing the scheduled repeal of an exemption from public records requirements for certain proprietary business information and information that is confidential and held by the Office of Insurance Regulation, etc. GO 03/31/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	**SB 7026** Regulated Industries (Identical H 7003)	OGSR/Florida State Boxing Commission; Amending a provision relating to an exemption from public records requirements for proprietary confidential business information obtained through an audit of a promoter's books and records or provided by a promoter to the Florida State Boxing Commission; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
28	**SB 7036** Agriculture (Identical H 7007)	OGSR/Department of Agriculture and Consumer Services; Amending a provision which provides an exemption from public records requirements for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer Services as part of an examination or investigation with another state or federal regulatory, administrative, or criminal justice agency; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
29	**SB 7050** Community Affairs	OGSR/Unsolicited Proposals; Amending a provision which provides exemptions from public records and public meetings requirements for unsolicited proposals received by a responsible public entity and portions of meetings at which such proposals are discussed; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/16/2021 Favorable	Favorable Yeas 17 Nays 0
30	**SB 7066** Regulated Industries (Compare CS/H 1311)	Public Records and Public Meetings/Public Service Commission; Exempting discussions of certain confidential information by the Public Service Commission during certain hearings from public meetings requirements; requiring such hearings to be recorded by a certified court reporter; providing that only redacted transcripts are subject to public records requirements; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. RC 04/16/2021 Favorable	Favorable Yeas 16 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 358
INTRODUCER:	Education Committee; Senator Berman, and others
SUBJECT:	Water Safety and Swimming Certification for K-12 Students
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Fav/CS**
2.	Westmark	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 358 establishes the "Edna Mae McGovern Act," which requires, beginning with the 2022-2023 school year, each public school to provide, to a parent who initially enrolls his or her child in the school, specified information on the important role water safety education courses and swimming lessons play in saving lives. The bill further specifies that:

- The information must include local options for age-appropriate water safety courses and swimming lessons that result in a certificate indicating successful completion, including courses and lessons offered for free or at a reduced price.
- If the student is 18 years of age or older, or is under the age of 21 and is enrolling in adult education classes, the information must be provided to the student.

There is no fiscal impact associated with this bill.

The bill takes effect July 1, 2021.

II. Present Situation:

In 2020, 68 children in Florida died from accidental drowning, while 16 child drownings have occurred in 2021, year to date.[1] In the past decade, the number of drownings among children

[1] Florida Department of Children and Families, *Child Fatality Prevention*, https://www.myflfamilies.com/ChildFatality/stateresults.shtml?minage=0&maxage=18&year=2020&cause=Drowning&prior12=&verified= (last visited March 24, 2021).

ages 3 to 5 and ages 5 to 12 has increased more than 50 and 62 percent, respectively.[2] Drowning is the leading cause of injury death in children ages 1 to 4, and the biggest drowning threat facing families with toddlers is unexpected, unsupervised access to water.[3]

As one of several strategies to help prevent accidental drowning deaths, the American Academy of Pediatrics recommends that children ages 4 and older learn to swim, through strategies including swim lessons that provide instruction on swimming techniques and water survival skills taught by instructors certified through a nationally recognized curriculum.[4]

K-12 Student and Parent Rights

All K-12 public school students are entitled to a uniform, safe, secure, efficient, and high quality system of education, one that allows students the opportunity to obtain a high quality education. Parents are responsible to ready their children for school.[5]

Each district school board and the governing authority of each private school must require each child who is entitled to initial entrance into a public or private school, to present a certification of a school-entry health examination performed within one year before enrollment in school.[6] Similar requirements exist for each child to have on file with the immunization registry a certification of immunization for the prevention of specified communicable diseases.[7]

The parent of any child attending a public or private school is exempt by law from student health-related school entrance requirements upon written request of the parent on religious grounds. Such exemptions include the requirement of a health examination[8] and the administration of immunizations.[9]

Next Generation Sunshine State Standards

Florida's Next Generation Sunshine State Standards include instruction on water safety from kindergarten through high school, involving identifying the dangers of entering a body of water without supervision, rules for safe water activities, and safety equipment and practices relating to water activities.[10]

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[2] Florida TaxWatch, *Every Child a Swimmer* (March 2021), *available at* https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/19005, at 1.
[3] American Academy of Pediatrics, *Drowning Prevention for Curious Toddlers: What Parents Need to Know* (March 15, 2019), *available at* https://www.healthychildren.org/English/safety-prevention/at-play/Pages/Water-Safety-And-Young-Children.aspx.
[4] American Academy of Pediatrics, *Swim Lessons: When to Start & What Parents Should Know* (March 15, 2019), *available at* https://www.healthychildren.org/English/safety-prevention/at-play/Pages/swim-lessons.aspx.
[5] Section 1002.20(1), F.S.
[6] Section 1003.22(1), F.S.
[7] Section 1003.22(4)(a), F.S.
[8] Section 1003.22(1), F.S.
[9] Section 1003.22(5)(a), F.S.
[10] *See* CPALMS, *Standards Information and Resources*, https://www.cpalms.org/Public/search/Standard# (last visited March 24, 2021).

III. Effect of Proposed Changes:

CS/SB 358 establishes the "Edna Mae McGovern Act,"[11] which creates s. 1003.225, F.S., to, beginning with the 2022-2023 school year, require each public school to provide, to a parent who initially enrolls his or her child in the school, information on the important role water safety[12] education courses and swimming lessons play in saving lives.

The bill specifies that the information must be provided electronically or in hardcopy, and must include local options for age-appropriate water safety courses and swimming lessons that result in a certificate indicating successful completion, including courses and lessons offered for free or at a reduced price.

The bill further specifies that, if the student is 18 years of age or older, or is under the age of 21 and is enrolling in adult education classes, the information must be provided to the student.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[11] The name of the act is based on the accidental drowning in Florida of a girl who was less than two years of age on August 3, 2009. *See* McGovern Foundation Inc., *Our Story*, https://www.mcgovernfoundation.com/our-story (last visited March 25, 2021); Water Smart Broward, *Edna Mae McGovern (12/29/07-9/11/09)* (June 29, 2015), *available at* https://watersmartbroward.org/news-stories/stories/edna-mae-mcgovern/.

[12] The bill defines "water safety" to mean age-appropriate education intended to promote safety in, on, and around bodies of water and reduce the risk of injury or drowning. The American Red Cross describes water safety through the following components: ensuring every member of one's family learns to swim to at least achieve skills of water competency (ability to enter the water, get a breath, stay afloat, change position, swim a distance, then get out of the water safely); employing layers of protection including barriers to prevent access to water, life jackets, and close supervision of children to prevent drowning; and knowing what to do in a water emergency, including how to help someone in trouble in the water safely, call for emergency help, and CPR. American Red Cross, *Water Safety*, https://www.redcross.org/get-help/how-to-prepare-for-emergencies/types-of-emergencies/water-safety.html (last visited March 25, 2021).

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 creates section 1003.225 of the Florida Statutes.

This bill creates an undesignated section of Florida Law.

IX. Additional Information:

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

CS by Education on March 30, 2021:
The committee substitute:

- Removes from the bill:
  - The requirement that each public and private school must require each child who is eligible for entrance to the school to present a certification of completion of a water safety education course and swimming lessons.
  - Provisions exempting a child from the water safety course and swimming lesson requirements upon written request from his or her parent.
- Adds to the bill a requirement that each public school provide to a parent who initially enrolls his or her child in the school, information on the important role water safety education courses and swimming lessons play in saving lives, and specifies that:

- The information must be provided electronically or in hardcopy and must include local options for age-appropriate water safety courses and swimming lessons that result in a certificate indicating successful completion, including courses and lessons offered for free or at a reduced price.
- If the student is 18 or older, or is under the age of 21 and is enrolling in adult education classes, the information must be provided to the student.

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 Education; and Senators Berman, Book, and Perry

A bill to be entitled

An act relating to water safety and swimming certification for K-12 students; providing a short title; creating s. 1003.225, F.S.; defining the term "water safety"; requiring public schools to provide specified information to certain parents or students; providing an effective date.

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

Section 1. This act may be cited as the "Edna Mae McGovern Act."

Section 2. Section 1003.225, Florida Statutes, is created to read:

1003.225 Water safety and swimming certification.—

(1) For the purposes of this section, the term "water safety" means age-appropriate education intended to promote safety in, on, and around bodies of water and reduce the risk of injury or drowning.

(2) Beginning with the 2022-2023 school year, each public school shall provide, to a parent who initially enrolls his or her child in the school, information on the important role water safety education courses and swimming lessons play in saving lives. The information must be provided electronically or in hardcopy and must include local options for age-appropriate water safety courses and swimming lessons that result in a certificate indicating successful completion, including courses and lessons offered for free or at a reduced price. If the student is 18 years of age or older, or is under the age of 21

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

Florida Senate - 2021 **CS for SB 358**

581-03559-21 2021358c1

and is enrolling in adult education classes, the information must be provided to the student.

Section 3. 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: April 2, 2021

I respectfully request that **Senate Bill #358**, relating to Water Safety, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Florida has more than 8,436 miles of shoreline and an estimated 1.5 million residential swimming pools. Tragically, the state has seen double child drownings since our pandemic began over a year ago. This bill asks parents of children entering any public or private school system, especially at the kindergarten level, to confirm whether their child has had age-appropriate swimming lessons. It is not a mandate but will allow school authorities to identify students who may not know how to swim and will help put these parents, where needed, in touch with free or low-cost programs to ensure their child has an opportunity to learn, presuming there is a desire.

Lori Berman

Senator Lori Berman
Florida Senate, District 31

CC: Senator Ileana Garcia, Vice Chair
John Phelps, Staff Director

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)

4/16/2021
Meeting Date

CS/SB 358
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Water Safety for K-12

Name Dominic Calabro

Job Title President & CEO, Florida Tax Watch

Address 106 North Bronough Street
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 322-5052

Email dcalabro@floridataxwatch.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida taxpayers

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)

358

Meeting Date | *Bill Number (if applicable)*

Topic Water Safety

Amendment Barcode (if applicable)

Name Karen Mazzola

Job Title Legislation Committee Chair

Address 1747 Orlando Central Parkway Phone 407-855-7604

Street

Orlando FL 32809 Email legislation@floridapta.org

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Florida Parent Teacher Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

04/16/2021
Meeting Date

358
Bill Number (if applicable)

Topic SB 358 Water Safety and Swimming Certification for K-12 Students

Amendment Barcode (if applicable)

Name Dr. Bill Kent

Job Title Chairman of the Board

Address 1 Hall of Fame Drive
Street

Phone 954-673-2058

Fort Lauderdale | FL | 33316
City | *State* | *Zip*

Email dbk@teamhorner.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing International Swimming Hall of Fame (ISHOF) Board of Directors

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

04/16/2021
Meeting Date

358
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 358 Water Safety and Swimming Certification for K-12 Students

Name Belinda Keiser

Job Title Workforce Educator / Vice Chancellor

Address 1900 W Commercial Blvd
Street

Phone 954-614-2929

Fort Lauderdale FL 33309
City *State* *Zip*

Email belindak@sec.edu

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Keiser University

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 418
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Burgess
SUBJECT:	Public Records/Persons Provided Public Emergency Shelter
DATE:	April 15, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Caldwell	MS	**Favorable**
2.	Candelaria	McVaney	GO	**Fav/CS**
3.	Stallard	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 418 exempts from public inspection and copying requirements the address and telephone number of a person which are held by an agency providing public emergency shelter to the person during a storm or catastrophic event.

The bill provides that the exemption created under the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2026, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution, providing that the exemption is necessary to limit the amount of privacy a person must forfeit by choosing to enter a shelter, and to protect a person from those who might seek to exploit their vulnerability following a catastrophic event.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is not expected to impact state or local government revenues and expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

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

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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] 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).

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 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]

---

[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).
[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.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to 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]

Public Shelters

The Division of Emergency Management (DEM) is established in the Executive Office of the Governor to serve as the state's emergency management agency.[27] The State Emergency Management Act[28] directs the DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

The DEM currently manages a program for surveying existing public and private buildings, with the owner's written agreement, to identify which facilities are appropriately designed and located

[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Section 14.2016, F.S.
[28] Section 252.31, F.S., through s. 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

to serve as shelters in the event of an emergency.[29] Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.[30]

The DEM is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government.[31] The CEMP[32] must include a shelter component, the Statewide Emergency Shelter Plan (plan),[33] with specific planning provisions and the CEMP must promote shelter activity coordination between the public, private, and nonprofit sectors.[34] The plan must include the following:

- Contain strategies to ensure the availability of adequate shelter space in each region of the state;
- Establish strategies for refuge-of-last-resort programs;
- Provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel;
- Provide for a post-disaster communications system for public shelters;
- Establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and
- Set forth policy guidance for sheltering people with special needs.[35]

The plan must be prepared and submitted to the Governor and Cabinet each even-numbered year.[36] The plan, among other requirements, must identify the location and square footage of existing shelters as well as shelters needed in the next five years.[37] The plan must also identify the types of public facilities that should be constructed to comply with emergency shelter criteria and must recommend an appropriate and available source of funding for the additional cost of constructing emergency shelters within these public facilities.[38]

Public shelters are not required to gather personal information on shelter residents, however, nothing in law prevents the collection of this information. Shelters that collect personal information on their residents may do so to have an accurate accounting of all persons staying within or to locate family members for the purpose of family reunification. While no public

[29] Section 252.385(2)(a), F.S.
[30] Section 252.385(4)(a), F.S.
[31] Section 252.35(2)(a), F.S.; *see also* s. 1013.372, F.S.
[32] FLA. ADMIN. CODE R. 27P-2.002, incorporates the CEMP by reference; *See* Comprehensive Emergency Management Plan, Division of Emergency Management, available at https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf (last visited January 27, 2021).
[33] 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, available at https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf (last visited January 27, 2021).
[34] Section 252.35(2)(a)2., F.S.
[35] *Id.*
[36] Section 1013.372(2), F.S.
[37] *Id.*
[38] *Id.*

record exemption for this information exists, the plan states that shelter staff members should "abide by principles of confidentiality."[39]

III. Effect of Proposed Changes:

Section 1 amends s. 252.385, F.S., to exempt[40] from public inspection and copying requirements the address and telephone number of a person which are held by an agency, as defined in s. 119.011, F.S., providing public emergency shelter to person during a storm or catastrophic event.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2026, unless the Legislature reviews and reenacts the exemptions by that date.

Section 2 provides a public necessity statement as required by the Florida Constitution. The statement asserts that:

> Shelters are made available to the public to provide a safe place of accommodation before, during, and immediately following an emergency. During an emergency, the people affected are in a vulnerable state, as they have voluntarily displaced themselves from their residences and possessions to seek refuge. The information submitted to an agency by such a person seeking shelter could be used by persons seeking to take advantage of their vulnerability during or following the emergency. In addition, people seeking shelter for their safety and the safety of their families should not be forced to forfeit their privacy for the sake of such safety.

Section 3 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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[39] *Supra*, note 33 at Appendix F, pg. F-2.

[40] There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the address and telephone number of a person which are held by an agency providing public emergency shelter to the person during a storm or catastrophic event. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the address and telephone number of a person using a public shelter provided by an agency during a storm or catastrophic event. This bill exempts only the address and telephone number of a person using a public shelter provided by an agency during a storm or catastrophic event from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An agency may incur a minimal fiscal impact associated with training staff responsible for complying with public records requests related to the creation of the public records exemptions. Costs associated with redacting the exempt information prior to releasing a record may be incurred. The costs, however, would be absorbed within existing resources, as they are part of day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 252.385, 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 Governmental Oversight and Accountability on April 6, 2021:
The CS removes the "name" of a person seeking shelter from the public records exemption and revises the public necessity statement to align it with the exempted information. The CS establishes that the exempted information is for a person provided public emergency shelter during a storm or catastrophic event. The CS removes all references to the term "assistance" throughout the 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.

By the Committee on Governmental Oversight and Accountability; and Senator Burgess

585-03842-21 2021418c1

A bill to be entitled

An act relating to public records; amending s. 252.385, F.S.; creating an exemption from public records requirements for the addresses and telephone numbers of persons provided public emergency shelter during a storm or catastrophic event and held by the agency that provided the emergency shelter; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (5) is added to section 252.385, Florida Statutes, to read:

252.385 Public shelter space; public records exemption.—

(5) The address and telephone number of a person provided public emergency shelter during a storm or catastrophic event and held by the agency, as defined in s. 119.011, which provided the emergency shelter is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the address and telephone number of a person who was provided public emergency shelter during a storm or other catastrophic event be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Emergency shelters are made available to the public to provide a safe place of accommodation before, during, and immediately following storms or other catastrophic events. During these emergency events, those affected are in a vulnerable state, as they have voluntarily displaced themselves from their residences and possessions to seek refuge. The information submitted to an agency by such a person seeking emergency shelter during a storm or other catastrophic event could be used by persons seeking to take advantage of their vulnerability during or following the emergency. In addition, those seeking emergency shelter for their safety and the safety of their families should not be forced to forfeit their privacy for the sake of such safety. Therefore, the Legislature finds that the need to protect the addresses and telephone numbers of individuals seeking emergency shelter is sufficiently compelling to override this state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

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

Florida Senate - 2021 **CS for SB 418**

585-03842-21 2021418c1

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: April 12, 2021

I respectfully request that **Senate Bill #418**, relating to Public Records/Person Provided Public Emergency Shelter, 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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 16, 2021
Meeting Date

SB 418
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic Public Records/Persons Seeking Shelter

Name Tonnette Graham

Job Title Associate Director of Public Policy

Address 100 S. Monroe Street
Street

Phone 850.509.5333

Tallahassee FL 32301
City *State* *Zip*

Email tgraham@fl-counties.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Counties

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 420
INTRODUCER:	Judiciary Committee and Senator Hooper
SUBJECT:	Motor Vehicle Insurance Coverage Exclusions
DATE:	April 15, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 420 authorizes private passenger motor vehicle policyholders to exclude identified individuals from the following coverages under their policy:

- Personal injury protection (PIP) coverage applicable to the identified individual's injuries, lost wages, and death benefits;
- Property damage liability coverage;
- Bodily injury liability coverage, when required by law;
- Uninsured motorist coverage for any damages sustained by the excluded individual; and
- Any coverage the policyholder is not required by law to purchase.

However, a private passenger motor vehicle policy may not exclude coverage when:

- The identified excluded individual is injured while not operating a motor vehicle;
- The exclusion is unfairly discriminatory under the Florida Insurance Code; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

The exclusion of an identified named driver is invalid unless the named policyholder consents in writing to the exclusion of a named driver and the excluded named drivers are listed on the policy's declarations page or policy endorsement.

An individual excluded by name in an insurance policy would not be covered for damages that occur while operating a motor vehicle that is insured under the policy. An excluded driver, however, must separately comply with financial responsibility laws.

II. Present Situation:

Part XI of ch. 627, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle coverage requirements. Owners and operators of motor vehicles must maintain the ability to respond in damages at specified minimum amounts for personal injury protection, bodily injury or death, and property damage. Current law requires insurance coverage that provides personal injury protection, or that is used to meet mandatory financial responsibility requirements, be issued to all driving age individuals residing in the same household.[1]

Florida's motor vehicle insurance laws do not currently authorize an insurer to exclude mandatory coverages of a named individual, up to minimum limits required under the laws. Thus, the Office of Insurance Regulation (OIR) requires that an insurer provide coverages satisfying minimum financial responsibilities requirements under Florida law, even when a named driver exclusion is elected.[2]

Minimum Insurance Requirements for Motor Vehicles

Florida's Financial Responsibility Law of 1955[3] provides financial security requirements for motor vehicle owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.[4] In combination with the Florida Motor Vehicle No-Fault Law,[5] operators of motor vehicles with four or more wheels are required to purchase minimum insurance coverages for property damage liability[6] and personal injury protection.[7] Proof of such coverage is required only after an accident.[8]

Property damage liability (PD) coverage pays damages to the third-party's property caused by the insured or member of the insured's household up to policy limits. Florida law currently requires minimum PD coverage limits in the amount of $10,000, or $30,000 for a combined PD and bodily injury liability policy.[9]

Personal injury protection (PIP) coverage pays the reasonable expenses for necessary medical services, lost wages, replacement services, and a death benefit to the insured for damages incurred in an accident regardless of fault. PIP coverage extends beyond the insured to include household relatives, pedestrians, and passengers without PIP coverage. Florida law currently requires minimum PIP coverage limits in the amount of $10,000 in the event of bodily injury to any one person who sustains an emergency medical condition,[10] which is reduced to a $2,500

[1] Section 627.736(1), F.S.
[2] *See* Office of Insurance Regulation, *Senate Bill 420 Agency Analysis*, p. 4 (February 18, 2021); *see also* Office of Insurance Regulation, *Senate Bill 518 Agency Analysis*, p. 2 (October 30, 2017) (on file with the Senate Committee on Banking and Insurance).
[3] Chapter 624, F.S.
[4] Section 324.011, F.S.
[5] Sections 627.730 – 627.7405, F.S.
[6] Section 324.022, F.S.
[7] Section 627.733, F.S.
[8] Section 324.011, F.S.
[9] Section 324.022(1), F.S.
[10] Section 627.736(1), F.S.

limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.[11] PIP coverage provides reimbursement for 80 percent of reasonable medical expenses, 60 percent of loss of income, and 100 of replacement services, for bodily injuries sustained in a motor vehicle accident, without regard to fault. PIP coverage also provides a $5,000 death benefit.[12]

Additional Optional Insurance Coverages for Motor Vehicles

Bodily injury liability (BI) coverage pays for bodily injury expenses caused by the insured or members of the insured's household to third-party in an accident. This coverage pays economic damages, such as medical bills and lost wages, and non-economic damages, such as pain and suffering of the third-party, up to policy limits. This coverage also provides legal representation and attorney fees to the insured in the event of a lawsuit. A driver in compliance with the requirement to carry PIP coverage is not required to maintain BI, except that Florida law requires proof of ability to pay monetary damages in the amount of $10,000 because of bodily injury to, or death of, one person in any one crash, and $20,000 for bodily injury to, or death of, two or more persons in any one crash.[13] This requirement is triggered when an operator or owner of a motor vehicle does not have an automobile liability policy and is in a motor vehicle crash that causes injury or death to others, does not stay at the scene of the crash, was driving under the influence, or is involved in a crash that requires a wrecker.[14] An owner or operator who drives under the influence must maintain non-cancelable coverage that provides BI with limits of at least $100,000/$300,000 and PD with limits of at least $50,000.[15] Additionally, motor vehicle insurance policies providing BI must also provide uninsured motor coverage, unless such coverage is declined by a named insured.[16] Uninsured motorist (UM) coverage pays the insured and passengers if injured by an uninsured or underinsured at-fault party. The coverage pays medical benefits and lost wages, and also covers pain and suffering damages. In Florida, UM is an optional coverage but must be offered up to the same limits as the insured has for BI.[17]

III. Effect of Proposed Changes:

Section 1 creates s. 627.747, F.S., authorizing a private passenger motor vehicle policyholder to exclude an identified individual of their household from the following coverages under their policy:

- Personal injury protection coverage applicable to the identified individual's injuries, lost wages, and death benefits;
- Property damage liability coverage;
- Bodily injury liability coverage;
- Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage; and
- Any coverage the policyholder is not required by law to purchase.

[11] Section 627.736(1)(a)(4), F.S.
[12] Section 627.736(1)(c), F.S.
[13] Chapter 324.022, F.S.
[14] Section 324.051, F.S.
[15] Section 324.023, F.S.
[16] Section 627.727(1), F.S.
[17] Section 627.727(2), F.S.

However, a private passenger motor vehicle policy may not exclude coverage when:

- The identified excluded individual is injured while not operating a motor vehicle;
- The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by OIR; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

The exclusion of an identified named driver is invalid unless the named policyholder consents in writing to the exclusion of a named driver and the excluded named drivers are listed on the policy's declarations page or policy endorsement.

An excluded driver must separately establish, maintain, and show proof of financial ability to respond for damages arising out of the ownership, maintenance, or use of a motor vehicle as required by the financial responsibility law[18] and must maintain financial security.[19]

Section 2 amends s. 324.151, F.S., governing motor vehicle liability policy provisions for satisfying financial responsibility requirements, to provide conforming changes consistent with the named drive exclusion provisions of the bill.

Section 3 amends s. 627.736, F.S., governing personal injury protection benefits, to provide conforming changes consistent with the named driver exclusion provisions of the bill.

Section 4 amends s. 627.7407, F.S., governing the personal injury protection requirements under Florida's Motor Vehicle No-Fault Law, to provide conforming changes consistent with the named drive exclusion provisions of the bill.

Section 5 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] Chapter 324, F.S.

[19] Security can be shown by commercially purchased insurance or qualifying self-insurance. s. 627.733, F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders are most likely to exclude drivers whose presence in their households results in the policyholder either paying substantially more in premium or not being able to obtain coverage from a preferred insurer. Thus, the bill creates more choice for the consumer of motor vehicle insurance to obtain insurance from a preferred insurer, and likely at a more affordable price. In this scenario, the owner of the vehicle should take special care to prevent the excluded driver from having access to the vehicle because the owner's liability coverage will not cover damages caused by the excluded driver.

Certain losses that are currently required to be covered under a private passenger motor vehicle policy would no longer be covered. This will negatively affect parties who suffer injury to their persons and property caused by an excluded driver who does not obtain their own insurance coverage. The excluded driver may also be negatively affected, as he or she will not receive PIP reimbursement for medical and wage loss damages. This problem will not arise, however, if the excluded driver has motor vehicle insurance coverage of his or her own.

SB 420 may also cause an indeterminate increase in uncompensated medical care. Medical providers may not be reimbursed for medical services provided to a named excluded driver injured as a result of an auto accident unless the named excluded driver had been injured as a passenger, has their own motor vehicle coverage, or has medical insurance. Similarly, when an excluded driver lacks insurance, treatment for injuries to others caused by the excluded driver may go uncompensated.

C. Government Sector Impact:

Public hospitals may not be reimbursed for emergency medical services provided to a named excluded driver injured as a result of an auto accident in certain circumstances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 324.151, 627.736, and 627.7407.

This bill creates section 627.747, 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 Judiciary on March 9, 2020:
The committee substitute adds the requirement that an excluded driver must comply with existing financial responsibility and security requirements.

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 Hooper

590-02602-21 2021420c1

A bill to be entitled

An act relating to motor vehicle insurance coverage exclusions; creating s. 627.747, F.S.; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; requiring excluded drivers to meet certain requirements for financial responsibility; amending ss. 324.151, 627.736, and 627.7407, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual who is not a named insured from the following coverages while the identified individual is operating a motor vehicle, provided the identified individual is named on the declarations page or by endorsement and the named insured consents in writing to such exclusion:

(a) Notwithstanding the Florida Motor Vehicle No-Fault Law, the personal injury protection coverage specifically applicable to the identified individual's injuries, lost wages, and death benefits.

(b) Property damage liability coverage.

(c) Bodily injury liability coverage, if required by law and purchased by the named insured.

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

590-02602-21 2021420c1

(d) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the named insured has purchased such coverage.

(e) Any coverage the named insured is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified individual is injured while not operating a motor vehicle;

(b) The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the office; or

(c) The exclusion is inconsistent with the underwriting rules filed by the insurer pursuant to s. 627.0651(13)(a).

(3) A driver excluded pursuant to this section must:

(a) Establish, maintain, and show proof of financial ability to respond for damages arising out of the ownership, maintenance, or use of a motor vehicle as required by chapter 324; and

(b) Maintain security as required by s. 627.733.

Section 2. Paragraph (a) of subsection (1) of section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1)~~,~~ shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy must ~~shall~~ designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby

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

granted, must ~~and shall~~ insure the owner named therein, and, except for a named driver excluded under s. 627.747, must insure any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 must provide personal injury protection to the named insured, relatives residing in the same household unless excluded under s. 627.747, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits

and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) *Medical benefits.*—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a chiropractic physician licensed under chapter 460, or an advanced practice registered nurse registered under s. 464.0123 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or an advanced practice registered nurse registered under s. 464.0123, or, to the extent permitted

by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, advanced practice registered nurses registered under s. 464.0123, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based upon a referral by a provider described in this subparagraph.

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed under chapter 464 has determined that the injured person had an emergency medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to $2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

(b) *Disability benefits.*—Sixty percent of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision must be paid at least every 2 weeks.

(c) *Death benefits.*—Death benefits of $5,000 per individual. Death benefits are in addition to the medical and disability benefits provided under the insurance policy. The insurer may pay death benefits to the executor or administrator of the deceased, to any of the deceased's relatives by blood, legal adoption, or marriage, or to any person appearing to the insurer to be equitably entitled to such benefits.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and such insurer may not require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such benefits. Insurers may not require that property

damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 4. Paragraph (a) of subsection (5) of section 627.7407, Florida Statutes, is amended to read:

627.7407 Application of the Florida Motor Vehicle No-Fault Law.—

(5) No later than November 15, 2007, each motor vehicle insurer shall provide notice of the provisions of this section to each motor vehicle insured who is subject to subsection (1). The notice is not subject to approval by the Office of Insurance Regulation. The notice must clearly inform the policyholder:

(a) That beginning on January 1, 2008, Florida law requires the policyholder to maintain personal injury protection ("PIP") insurance coverage and that this insurance pays covered medical expenses for injuries sustained in a motor vehicle crash by the policyholder, passengers, and relatives residing in the policyholder's household unless excluded under s. 627.747.

Section 5. 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

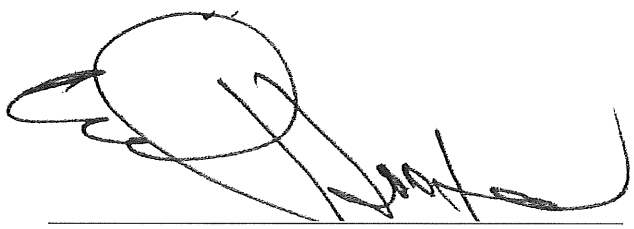
Date: March 10, 2021

I respectfully request that **Senate Bill # 420**, relating to Motor Vehicle Insurance Coverage Exclusions, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

CS/SB 420 authorizes private passenger motor vehicle policyholders to exclude identified individuals from specified coverages under their policy with exceptions for when a private passenger motor vehicle policy may not exclude coverage. The exclusion of an identified named driver is invalid unless the named policyholder consents in writing to the exclusion of a named driver and the excluded named drivers are listed on the policy's declarations page or policy endorsement. An individual excluded by name in an insurance policy would not be covered for damages that occur while operating a motor vehicle that is insured under the policy. An excluded driver, however, must separately comply with financial responsibility laws.



Senator Ed Hooper
Florida Senate, District 16

File signed original with committee office

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 490
INTRODUCER:	Governmental Oversight and Accountability Committee and Senators Bracy and Stewart
SUBJECT:	Juneteenth Day
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	**Fav/CS**
2.	Candelaria	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 490 designates June 19, also known as "Juneteenth Day", as a legal holiday. The bill repeals "Juneteenth Day" as a day of observance to conform to the act.

This bill takes effect July 1, 2021.

II. Present Situation:

The Emancipation Proclamation

The Civil War in the United States began in 1861, after decades of tensions between northern and southern states over slavery, states' rights, and westward expansion. The election of Abraham Lincoln in 1860 caused 11 southern states to secede and form the Confederate States of America.[1] President Lincoln and most of the northern states, also known as the "Union," refused to recognize the legitimacy of the succession, as they feared it would discredit democracy and fragment the country. On January 1, 1863, President Lincoln issued the Emancipation Proclamation declaring that "all persons held as slaves are, and henceforward shall be free."[2] The Emancipation Proclamation was limited only to states that seceded from the United States,

[1] American Battlefield Trust, *Civil War Facts*, available at https://www.battlefields.org/learn/articles/civil-war-facts, (last visited March 15, 2021)

[2] National Archives, *The Emancipation Proclamation*, available at https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation#:~:text=President%20Abraham%20Lincoln%20issued%20the,and%20henceforward%20shall%20be%20free.%22, (last visited on March 15, 2021)

leaving slavery untouched in the northern states. The freedom promised under the Emancipation Proclamation was dependent upon the northern states military victory. Further, the Emancipation Proclamation established the acceptance of black men into the Union military. By the end of the war, almost 200,000 black soldiers and sailors fought for the Union military.[3] The Civil War was the costliest and deadliest war ever fought on American soil, with approximately 620,000 soldiers killed. The Civil War ended in 1865, with the Confederate army surrendering to General Ulysses S. Grant and the Union army in North Carolina.

Emancipation Day in Florida

On May 10, 1865, more than two years after the President Lincoln issued the Emancipation Proclamation, Union Brigadier General Edward M. McCook arrived in Tallahassee to receive the surrender of Florida's Confederate troops. On May 20, McCook formally announced President Lincoln's Emancipation Proclamation from the steps of the Knott House, effectively ending slavery in the state.[4] As a result, May 20 has been traditionally celebrated as Emancipation Day in Florida.

Juneteenth

On June 19 ("Juneteenth"), 1865, General Gordon Granger of the Union Army arrived in Galveston, Texas, and read General Order No. 3 announcing the end of the Civil War and that all slaves were free in accordance with President Abraham Lincoln's Emancipation Proclamation. Although the Emancipation Proclamation was issued on January 1, 1863, it had little impact in the South without Union enforcement, and many slaves were unaware of it. The first Juneteenth celebrations were used as political rallies and to teach freed African Americans about their voting rights.[5] During the era of Jim Crow laws, Juneteenth celebrations diminished until the civil rights movement when the Poor People's March planned by Martin Luther King, Jr., was purposely scheduled to coincide with the date. The March brought Juneteenth back to the public's attention, and the holiday was essentially reborn.[6]

Legislation

Most states officially recognize Juneteenth as a day of observance, however, it is not a national holiday. In 1980, Texas became the first state to declare Juneteenth a state holiday. Since that time, forty-six other states and the District of Columbia have passed legislation recognizing it as a holiday or day of observance. In 1991, the Florida Legislature designated June 19th of each year as "Juneteenth Day" to commemorate the traditional observance of the day the slaves in Florida were notified of the Emancipation Proclamation.[7] The following states have established

[3] *Id.*
[4] State Library and Archives of Florida, *Juneteenth and Emancipation Day in Florida*, https://www.floridamemory.com/items/show/333282 (last visited March 15, 2021).
[5] *See Juneteenth*, https://tshaonline.org/handbook/online/articles/lkj01, (last visited March 11, 2021).
[6] *See 12 Things You Might Not Know About Juneteenth*, https://www.mentalfloss.com/article/501680/12-things-you-mightnot-know-about-juneteenth (last visited March 8, 2021).
[7] Section 683.21, F.S.

Juneteenth Day as a paid holiday for state employees: Texas,[8] Virginia;[9] New York;[10] New Jersey;[11] Pennsylvania; and[12] Massachusetts.[13]

Legal Holidays

Chapter 683, F.S., establishes legal holidays and special observance days. Designation of a legal holiday under ch. 683, F.S., does not constitute such day as a paid holiday. Section 110.117 sets forth the holidays that are paid holidays to be observed by all state branches and agencies.[14]

Whenever any legal holiday falls on a Sunday, the following Monday shall be deemed a public holiday for all and any of the purposes aforesaid.[15]

Section 683.01(1), F.S., provides the legal holidays of Florida, which are also declared to be public holidays, are:

- Sunday, the first day of each week;
- New Year's Day, January 1;
- Birthday of Martin Luther King, Jr., January 15;
- Birthday of Robert E. Lee, January 19;
- Lincoln's Birthday, February 12;
- Susan B. Anthony's Birthday, February 15;
- Washington's Birthday, the third Monday in February;
- Good Friday;
- Pascua Florida Day, April 2;
- Confederate Memorial Day, April 26;
- Memorial Day, the last Monday in May;
- Birthday of Jefferson Davis, June 3;
- Flag Day, June 14;
- Independence Day, July 4;
- Labor Day, the first Monday in September;
- Columbus Day and Farmer's, the second Monday in October;
- Veteran's Day, November 11;
- General Election Day;
- Thanksgiving Day, the fourth Thursday in November;

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[8] Texas Comptroller, *State of Texas Holiday Schedule, available at* https://comptroller.texas.gov/about/holidays.php, (last visited March 11, 2021)
[9] Commonwealth of Virginia, *2021 Pay and Holiday Leave, available at* https://www.dhrm.virginia.gov/docs/default-source/default-document-library/payandholidaycalendar2020.pdf?sfvrsn=815b0c03_6 (last visited March 14, 2021)
[10] New York Department of Civil Service, *2021 Calendar of Legal Holidays for State Employees, available at* https://www.cs.ny.gov/attendance_leave/2020_legal_holidays.cfm, (last visited March 11, 2021)
[11] Executive Office of the Governor, *State Holidays, available at* https://www.state.nj.us/nj/about/facts/holidays/, (last visited March 11, 2021)
[12] Pennsylvania Budget, *State Holidays for 2020, available at* https://www.budget.pa.gov/Services/ForAgencies/Payroll/Documents/2020-calendar.pdf, (last visited March 14, 2021)
[13] Secretary of the Commonwealth of Massachusetts, *Massachusetts Legal Holidays, available at* https://www.sec.state.ma.us/cis/cishol/holidx.htm (last visited March 11, 2021)
[14] Section 110.117(1), F.S.
[15] Section 683.01(2),F.S.

- Christmas Day, December 25; and
- Shrove Tuesday, sometimes also known as "Mardi Gras", in counties where carnival associations are organized for the purpose of celebrating the same.[16]

In contracts to be performed in the state, reference made to "legal holidays" is to be understood to include those holidays designated in s. 683.01 and such others as may be designated by law.[17]

III. Effect of Proposed Changes:

Section 1 amends s. 683.01, F.S., to designate June 19, also known as "Juneteenth Day", as a legal holiday.

Section 2 repeals s. 683.21, F.S., to remove Juneteenth Day as a day of traditional observance in order to conform to the act.

Section 3 provides the bill take effect July 1, 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, or 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.

[16] Section 683.01(a)-(u), F.S.
[17] Section 683.02, F.S.

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 683.01 of the Florida Statutes.

The bill repeals section 683.21 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 Governmental Oversight and Accountability on March 17, 2021:
The CS designates June 19, also known as "Juneteenth Day", as a legal holiday. The CS eliminates provisions designating "Juneteenth Day" as a paid state holiday.

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 Governmental Oversight and Accountability; and Senators Bracy and Stewart

585-02991-21 2021490c1

A bill to be entitled

An act relating to Juneteenth Day; amending s. 683.01, F.S.; designating Juneteenth Day as a legal holiday; repealing s. 683.21, F.S., relating to Juneteenth Day; deleting provisions designating Juneteenth Day as a special observance, to conform to changes made by the act; providing an effective date.

WHEREAS, on January 1, 1863, President Abraham Lincoln issued the Emancipation Proclamation, which afforded free status under federal law to the millions of enslaved African Americans who resided in states that had seceded from the Union, including Florida, and

WHEREAS, despite the issuance of the Emancipation Proclamation, it was not fully enforced in certain regions of the United States for more than 2 years afterwards, and

WHEREAS, on or about June 19, 1865, federal authorities arrived in Galveston, Texas, to enforce the Emancipation Proclamation and further inform slaves that the Civil War had ended and that the enslaved were now free, and

WHEREAS, thereafter, former slaves and their descendants continued to commemorate each June 19 to celebrate freedom and the emancipation of all slaves in the United States, and

WHEREAS, emancipation in Florida was proclaimed in Tallahassee on May 20, 1865, and for this reason Floridians traditionally celebrate Emancipation Day on May 20 of each year, and

WHEREAS, in 1991, the Florida Legislature officially designated June 19 of each year as "Juneteenth Day" to

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

585-02991-21 2021490c1

commemorate the freeing of slaves, but did not designate the day as an official legal holiday, and

WHEREAS, this act designates Juneteenth Day as a legal holiday in this state to commemorate the announcement of the abolition of slavery and to recognize the significant contributions of African Americans to this state and our nation, NOW, THEREFORE,

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

Section 1. Present paragraphs (n) through (u) of subsection (1) of section 683.01, Florida Statutes, are redesignated as paragraphs (o) through (v), respectively, and a new paragraph (n) is added to that subsection, to read:

683.01 Legal holidays.—

(1) The legal holidays, which are also public holidays, are the following:

(n) Juneteenth Day, June 19.

Section 2. Section 683.21, Florida Statutes, is repealed.

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:
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 19, 2021

The Honorable Kathleen Passidomo
Chair, Committee on Rules
402 Senate Building
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/SB 490 - Juneteenth Day:** This bill changes the designation of Juneteenth from its present designation as a special day of observance to a legal holiday. Juneteenth commemorates the traditional observance of the end of slavery in the United States when news of the Emancipation Proclamation reached African Americans living in Galveston, Texas on June 19, 1865.

Your consideration of this agenda request is greatly appreciated. Please do not hesitate to let me know if you have any questions or concerns.

Sincerely,

Senator Randolph Bracy
District 11

cc: John B. Phelps, Staff Director
Tom Yeatman, Deputy Staff Director
Cyndi Futch, Committee Administrative Assistant

REPLY TO:
☐ 6965 Piazza Grande Avenue, Suite 211, 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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/2021
Meeting Date

SB 490
Bill Number (if applicable)

Topic Emancipation Proclamation

Amendment Barcode (if applicable)

Name John R. Nelson, Sr.

Job Title Retired

Address 495 Melrose Drive
Street

Phone (850) 241-2145

Monticello, FL 32344
City *State* *Zip*

Email nelsonsrjohn@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

June 16 2021
Meeting Date

490
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic JUNETEENTH

Name LONNIE MANN

Job Title RETD.

Address 1120 E. WINDWOOD WAY
Street

TALLAHASSEE FL 32311
City *State* *Zip*

Phone 850 878 2804

Email BSCOTCHD EMBARQMAIL.COM

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/16/2021
Meeting Date

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

490
Bill Number (if applicable)

Topic JUNETEENTH DAY - designation as a official Emancipation Day legal holiday in FL

Amendment Barcode (if applicable)

Name KATHLEEN SPEHAR

Job Title EXECUTIVE DIRECTOR, COUNCIL ON CULTURE & ARTS

Address 816 S. MLK BLVD
Street

Phone 850-224-2500

TALLAHASSEE FL 32301
City *State* *Zip*

Email Kathleen@tallahasseearts.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

4/16/21
Meeting Date

490
Bill Number (if applicable)

Topic Emancipation

Amendment Barcode (if applicable)

Name Mary Miaisha Mitchell

Job Title Executive Director

Address 1009 Ellington Court
Street

Phone 850-284-0366

Tallahassee FL. 32304
City *State* *Zip*

Email mmiaisha@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Greater Frenchtown Front Porch Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/2021
Meeting Date

SB 490
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Juneteenth day

Name Michael Johnson

Job Title Respiratory therapist

Address 2421 [redacted] SW 8th ct
Street

Phone 954-297-7282

North Lauderdale FL 33068
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing My self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

4-16-21
Meeting Date

490
Bill Number (if applicable)

Topic Juneteenth

Amendment Barcode (if applicable)

Name Robert Holladay

Job Title President, Tallahassee Historical Society

Address 3362 Foley Drive
Street

Phone 8502127730

Tallahassee FL 32309
City *State* *Zip*

Email wingbiddlebaumjr@gmail.co

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Myself and Tallahassee Historical Society

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

4/16/2021
Meeting Date

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

H90
Bill Number (if applicable)

Topic Emancipation

Amendment Barcode (if applicable)

Name Althemese Barnes

Job Title ED - Florida African American Museum Network

Address 2619 Summerwood Ave
Street

Phone 850.766.4266

Tallahassee FL 32303
City *State* *Zip*

Email atbarnes2619@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Network

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)

4/16/20
Meeting Date

SB 490
Bill Number (if applicable)

Topic Juneteenth Day

Amendment Barcode (if applicable)

Name Christie Henry

Job Title Community Advocate / Business Owner

Address ~~3~~ 2207 Pontiac Dr
Street

Phone (850) 509-5559

Tallahassee FL 32301
City *State* *Zip*

Email christiehenry@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing General Community Member

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 518
INTRODUCER:	Senator Diaz
SUBJECT:	Drones
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Caldwell	MS	**Favorable**
2.	Paglialonga	Ryon	CA	**Favorable**
3.	Stallard	Phelps	RC	**Favorable**

I. Summary:

SB 518 provides an additional exception to the statutory ban on certain uses of drones by law enforcement agencies, fire departments, state agencies, and political subdivisions of the state.

Currently, s. 934.50, F.S., prohibits a:

- Law enforcement agency from using a drone to gather evidence or other information.
- Person, or state or local entity, from using a drone to capture images of private property in violation of a person's reasonable expectation of privacy.

However, these prohibitions are subject to exceptions, and the bill adds an exception. Specifically, under the bill, s. 943.50, F.S., no longer prohibits a state agency or political subdivision to use a drone for the assessment of damage due to a hurricane, a flood, a wildfire, or any other natural disaster.

The bill takes effect July 1, 2021.

II. Present Situation:

Overview

Section 934.50, F.S., prohibits a law enforcement agency from using a drone to gather information, and prohibits any person or state entity from using a drone to record an image of a person in violation of the person's reasonable expectation of privacy.[1] However, these prohibitions are subject to several exceptions, including use for aerial mapping, to capture

[1] Section 934.50(3), F.S.

images for a utility company or communications services provider, or for specified law enforcement purposes.[2]

Federal law, unlike Florida law, does not include a statute or regulation expressly targeting governmental drone use that might invade a citizen's privacy. However, federal law does include various restrictions and regulations on drone use, including airspace restrictions and licensing requirements.

Drones

A drone, also called an Unmanned Aerial Vehicle (UAV) and Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.[3]

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.[4] They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.[5]

Federal Law and Regulation

Federal law and regulation govern who may fly a drone, as well as when and where the person may do so. The FAA is responsible for regulating aircraft, including drones, that fly in U.S. airspace.[6] In February 2012, Congress passed the Federal Aviation Authority (FAA) Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to nongovernmental drones by September 2015.[7]

Neither federal law nor regulation categorically prohibit governmental agents to operate a drone over an area damaged by a hurricane, flood, wildfire, or other natural disaster. However, the FAA often implements Temporary Flight Restrictions around wildfires to protect firefighting

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[2] See s. 934.50(4), F.S., for the list of exceptions.
[3] Section 934.50(2), F.S.
[4] 72 FR 6689, Federal Aviation Administration (FAA), *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007, available at https://www.federalregister.gov/documents/2007/02/13/E7-2402/unmanned-aircraft-operations-in-the-national-airspace-system.
[5] *Id*.
[6] *See* 49 U.S.C. s. 40103(b)(1) and (2).
[7] Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed February 3, 2021).

aircraft.[8] Additional FAA airspace restrictions include the area around Washington, D.C., sports stadiums, and airports.[9]

Choice of Regulatory Framework for Governmental Operators

A governmental agent may operate a drone under one of two legal frameworks — that for "public unmanned aircraft systems," or that for "small unmanned aircraft systems." The framework for small unmanned aircraft systems is much more extensive, and it is the same framework under which a private citizen would operate a drone.[10]

The legal framework for "public unmanned aircraft systems" consists primarily of one statute.[11] Under this statute, a governmental operator may seek a certificate of authorization or certificate of waiver from the FAA.[12] If granted, the operator may operate a drone weighing 4.4 pounds or less.[13] The drone must be kept within the line of sight of the operator and below 400 feet, and may only be operated during the day.[14]

Many governmental operators choose instead to operate their drones as "small unmanned aircraft systems." These drones are subject to extensive regulations, codified in the Code of Federal Regulations, and first promulgated in 2016.[15] These regulations were recently substantially amended, and the amendments take effect in March.[16]

As of March 16, 2021, operators of small drones (those under 55 pounds) will no longer need to seek special authorization before operating a drone that passes over people, including people in moving vehicles.[17] However, the regulations pertaining to these flights vary somewhat,

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[8] FAA, *FAA Drones and Wildfires Digital Toolkit*, available at https://www.faa.gov/uas/media/FAA_drones_wildfires_toolkit.pdf (last viewed February 3, 2021). Moreover, Congress has authorized the FAA to impose a civil penalty of up to $20,000 against any drone pilot who interferes with wildfire suppression, law enforcement, or emergency response operations. FAA, *FAA Targets UAS Violators for Enforcement*, available at https://www.faa.gov/news/updates/?newsId=91706 (last visited Feb. 4, 2021).

[9] FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, July 16, 2020, available at https://www.faa.gov/uas/where_to_fly/airspace_restrictions/ (last viewed February 7, 2021); *see also* FAA Drones and Wildfires Digital Toolkit, available at https://www.faa.gov/uas/media/FAA_drones_wildfires_toolkit.pdf (last viewed February 3, 2021).

[10] FAA, Drones in Public Safety—A Guide to Starting Operations (Feb. 2019), available at https://www.faa.gov/uas/public_safety_gov/media/Law_Enforcement_Drone_Programs_Brochure.pdf; FAA, *A "UAS Primer for Public Safety", Public Aircraft OPS VS Part 07*, (Jan. 2020), available at https://www.faasafety.gov/files/gslac/library/documents/2020/Jan/233377/Public%20Safety%20PAO%20vs%20Part%20107%20Primer%20v2.1.pdf. See 49 U.S.C. ch. 448 for the federal statutes pertaining to drones. The primary statute relating to public unmanned aircraft systems is 49 U.S.C. s. 44806, and the primary statute relating to small unmanned aircraft systems is 49 U.S.C. s. 44802. The rules authorized by 49 U.S.C. s. 44802 are at 14 C.F.R. 107.

[11] 49 U.S.C. s. 44806.

[12] *See* 49 U.S.C. s. 44806(a)(1).

[13] 49 U.S.C. s. 44806(b)(2)(C).

[14] *Id*.

[15] *See* 14 C.F.R. 107.

[16] FAA, *Operation of Small Unmanned Aircraft Systems Over People*, 86 FR 4314, available at https://www.federalregister.gov/d/2020-28947/p-85.

[17] *Id.* Prior to this change, a drone operator who did not have special authorization could not fly a drone over people who were not in covered structure, stationary vehicle, or participating in the drone operation.

depending on the size of the craft.[18] Moreover, operating a drone in *sustained* flight over an open-air assembly of people remains subject to restrictions.[19] Under these restrictions, a drone must be equipped with individual identification as specified in rule and must continuously transmit specified information regarding its location.[20]

However, these restrictions are subject to waiver by the FAA. Thus, if an operator receives a waiver, he or she does not have to meet the normal requirements for operating a drone over people.[21]

Florida Law

Florida's Prohibition on Certain Drone Uses – Section 934.50, F.S.

Section 934.50, F.S., is the "Freedom from Unwarranted Surveillance Act." Subject to exceptions, it prohibits a law enforcement agency[22] from using a drone to gather information and prohibits private or governmental entities from using a drone to capture images in violation of a person's reasonable expectation of privacy. For the purposes of this statute, a real property owner, tenant, occupant, invitee, or licensee is presumed to have a reasonable expectation of privacy from drone surveillance[23] while on the property.[24] However, this presumption only applies while the person is "not observable by persons located at ground level in a place where they have a right to be."[25]

Section 934.50, F.S., includes a list of ten exceptions to its ban on drone surveillance. These exceptions include specified uses by law enforcement, utilities, firefighters, businesses, and individuals. The statute provides that it does not prohibit drone use for aerial mapping, for specified purposes by a utility company, for the delivery of cargo, or for surveying of wildlife and vegetation by a non-law enforcement employee of the Florida Fish and Wildlife Commission.[26] With regard to law enforcement, the statute does not prohibit drone use that is

[18] *See* 14 C.F.R. 107.110-165 (effective March 16, 2021), available at https://www.ecfr.gov/cgi-bin/text-idx?SID=a70adf1ff1545784a28e989f2ddeae94&mc=true&node=20210115y1.103. These provisions set forth Categories 1 through 4, each with its own requirements.
[19] The FAA describes sustained flight to include "hovering above the heads of persons gathered in an open-air assembly, flying back and forth over an open-air assembly, or circling above the assembly in such a way that the small unmanned aircraft remains above some part of the assembly." FAA, *Operation of Small Unmanned Aircraft Over People*, 86 FR 4314, available at https://www.federalregister.gov/d/2020-28947/p-208.
[20] See 14 C.F.R. 89.110 and 89.115(a) (effective March 16, 2021) for the details of these requirements, available at https://www.ecfr.gov/cgi-bin/text-idx?SID=a70adf1ff1545784a28e989f2ddeae94&mc=true&node=pt14.2.89&rgn=div5.
[21] 14 C.F.R. 107.205.
[22] A law enforcement agency is defined in s. 934.50(2)(d), F.S., as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.
[23] Surveillance is defined in. s. 934.50(2)(e), F.S.: With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or with respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.
[24] Section 934.50(3)(b), F.S.
[25] *Id.*
[26] See s. 934.50(4), F.S., for a complete list of the exceptions, including the specific circumstances required for each exception.

pursuant to a search warrant or when the agency has a reasonable suspicion that "swift action" is necessary to prevent the imminent loss of life, escape of a prisoner, or other specified circumstance.[27]

Section 934.50, F.S. provides several remedies for victims of prohibited drone use.[28] In order to enforce the prohibition in s. 934.50, F.S., on the wrongful use of a drone by law enforcement, the statute provides that evidence collected in violation of the statute is inadmissible in court. Moreover, an aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of s. 934.50, F.S.[29] Additionally, a victim may recover compensatory damages against any person or entity that violates s. 934.50, F.S., and may be entitled to punitive damages.[30]

Fire Department Use of Drones

According to an October 2018 news article, fire departments use UAVs for reconnaissance of wildfires and motor vehicle accident scenes, hazmat incidents, and hot spot identification at structure fires. In addition to the reconnaissance function and hot spot identification, additional uses for UAVs include:

- Search and rescue, even in urban settings;
- Preplanning with aerial photos and video identifying water supply sources, utility shutoffs, and apparatus location planning;
- Winter and ice rescue; and
- Disaster assessment and post-disaster reconnaissance after weather events such as floods or tornados.[31]

The Mesa Fire and Medical Department in Mesa, Arizona, has also used drones in a variety of capacities, including:

- Gaining a 360-degree perspective on damaged structures;
- Surveying buildings to provide hazard assessments for property owners;
- Water rescue operations and flood damage assessment;
- Assisting with a search for a missing kindergarten teacher; and
- Demonstrating how drones outfitted with special meters and cameras to identify lethal chemicals in hazmat situations can help keep first responders safe.[32]

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[27] Section 934.50(4)(b) and (c), F.S. Section 934.50, F.S., also does not prohibit the use of a drone to counter a high risk of a terrorist attack if the Secretary of the U.S. Department of Homeland Security indicates that such a risk exists. Section 934.50(4)(a), F.S.
[28] *See* s. 934.50(5), F.S.
[29] Section 934.50(5)(a), F.S.
[30] See s. 934.50(5), F.S., for the complete list of remedies.
[31] Fire Apparatus & Emergency Equipment, Alan M. Petrillo, *Fire Department Drones Serve a Variety of Needs on Incident Scenes*, October 1, 2018, available at https://www.fireapparatusmagazine.com/fire-apparatus/fire-department-drones-serve-a-variety-of-needs-on-incident-scenes/#gref (last viewed February 3, 2021).
[32] Wayne Schutsky, East Valley Tribune, *Ariz. Fire, EMS Leads the Way with Drone Use*, December 20, 2017, available at https://www.ems1.com/ems-products/technology/articles/370989048-Ariz-fire-EMS-leads-the-way-with-drone-use/ (last viewed February 3, 2021).

In Brevard County, Fire Rescue personnel have been trained to test for the FAA drone pilot certification[33] so they can conduct search-and-rescue operations, ocean rescue, map brush fires, and examine burning buildings to identify safe entry points for firefighters using drones.[34]

Other Governmental Uses for Drones

Drones are becoming useful for governmental functions outside policing. For example, the Daytona Beach Police Department utilized its drones to document the state of the city's infrastructure immediately before and after Hurricane Irma came through in September 2017 to provide the Federal Emergency Management Agency with the proof necessary to obtain funding for rebuilding. Additionally, the department was able to aid first responders in navigating the fastest and safest routes to those in need of aid by providing a birds-eye view of downed power lines, unstable infrastructure, and blocked roads in the wake of the storm.[35]

III. Effect of Proposed Changes:

SB 518 provides an additional exception to the statutory ban on certain uses of drones by law enforcement agencies, fire departments, state agencies, and political subdivisions of the state.

Currently, s. 934.50, F.S., prohibits a:

- Law enforcement agency from using a drone to gather evidence or other information.
- Person, or state or local entity, from using a drone to capture images of private property in violation of a person's reasonable expectation of privacy.

However, these prohibitions are subject to exceptions, and the bill adds an exception. Specifically, under the bill, s. 943.50, F.S., no longer prohibits a state agency or political subdivision to use a drone for the assessment of damage due to a hurricane, a flood, a wildfire, or any other natural disaster.

The bill takes effect July 1, 2021.

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[33] Federal Aviation Administration, *Become a Drone Pilot*, available at https://www.faa.gov/uas/commercial_operators/become_a_drone_pilot/ (last viewed February 3, 2021).

[34] Rick Neale, Florida Today, *Florida Tech drone training takes flight for Brevard County firefighters, lifeguards*, November 30, 2018, available at https://www.floridatoday.com/story/news/2018/11/30/florida-tech-drone-training-takes-flight-brevard-firefighters/2140086002/ (last viewed February 3, 2021).

[35] Police1.com, Jinnie Chua, *Why drones should be part of every PD's disaster response plan*, February 22, 2018, available at https://www.policeone.com/2018-guide-drones/articles/471474006-Why-drones-should-be-part-of-every-PDs-disaster-response-plan/ (last viewed February 3, 2021); for additional ways the Daytona Beach Police Department has utilized its drones *see* Stephen Rice, Forbes.com, *10 Ways That Police Use Drones To Protect And Serve*, October 7, 2019, available at https://www.forbes.com/sites/stephenrice1/2019/10/07/10-ways-that-police-use-drones-to-protect-and-serve/?sh=5a1b31d96580 (last viewed January 8, 2021); and Ginger Pinholster, Fox News 35, Orlando, *Eyes in the Sky and Embry-Riddle Training Help Police End Hotel Standoff*, September 27, 2019, available at https://news.erau.edu/headlines/eyes-in-the-sky-and-embry-riddle-training-help-police-end-hotel-standoff (last viewed February 3, 2021).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could lead to cost-savings by state and local governments. The bill provides additional exceptions to the statutory ban on drone use by governmental agents. Accordingly, these entities may be able to use drones, for instance, to more efficiently assess an area ravaged by a hurricane or fire.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Supreme Court has recently ruled that a pandemic is a "natural emergency" within the meaning of s. 252.34(8), F.S.[36] It is unclear whether a pandemic is within the meaning of "natural disaster" as used by the bill.

VIII. Statutes Affected:

This bill substantially amends section 934.50 and reenacts section 330.41 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.

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

[36] "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. Section 252.34(8), F.S. *See Abramson v. DeSantis*, Case No.: SC20-646, 202 WL 3464376 (Fla. June 25, 2020).

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 38 and 39
insert:

(7) SECURITY MEASURES.—

(a) A governmental agency, which means any state, county, local, or municipal governmental entity or any unit of government created or established by law that uses a drone as authorized under this section, must take protective measures to secure data collected by the drone. A governmental agency may comply with this requirement by operating the drone in a manner

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that ensures that data is securely transmitted and that does not require connecting the drone to the Internet or transmitting data through the use of the Internet. If a governmental agency transmits data through the Internet, the data must be encrypted, including all sensitive flight data, such as location, flight path, or other system control logs, whether the drone is in transit or at rest.

(b) Any governmental agency that uses drone technology must ensure that any information gathered in the operation and management of the drone, including all associated software, hardware, and data, remains within the borders of the United States.

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

Delete lines 14 - 15

and insert:

Statutes, is amended, and paragraph (l) of subsection (4) and subsection (7) are added to that section, to read:

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

Between lines 5 and 6

insert:

requiring governmental agencies to take protective measures to secure data collected by drones; requiring that certain data be encrypted; requiring a governmental agency using drone technology to ensure that specified information remains within the borders

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of the United States;

By Senator Diaz

36-00595-21 2021518__

A bill to be entitled

An act relating to drones; amending s. 934.50, F.S.; expanding the authorized uses of drones by a state agency or political subdivision to include the assessment of damage due to natural disasters; reenacting s. 330.41(4)(c), F.S., relating to unmanned aircraft systems, to incorporate the amendment made to s. 934.50, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (3) of section 934.50, Florida Statutes, is amended, and paragraph (l) is added to subsection (4) of that section, to read:

934.50 Searches and seizure using a drone.—

(3) PROHIBITED USE OF DRONES.—Except as provided under subsection (4):

(a) A law enforcement agency may not use a drone to gather evidence or other information.

(b) A person, a state agency, or a political subdivision as defined in s. 11.45 may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(l) By a state agency or political subdivision for the assessment of damage due to a hurricane, a flood, a wildfire, or any other natural disaster.

Section 2. For the purpose of incorporating the amendment made by this act to section 934.50, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 330.41, Florida Statutes, is reenacted to read:

330.41 Unmanned Aircraft Systems Act.—

(4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

(c) This subsection does not apply to actions identified in paragraph (a) which are committed by:

1. A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity.

2. A law enforcement agency that is in compliance with s. 934.50, or a person under contract with or otherwise acting under the direction of such law enforcement agency.

3. An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

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

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

SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE
Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy Chair
Appropriations Subcommittee on Education Vice Chair
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Commerce and Tourism
Rules

March 31, 2021

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request Senate Bill 518 Drones be placed on the next committee agenda.

SB 518 provides an additional exception to the statutory ban on certain uses of drones by law enforcement agencies, fire departments, state agencies, and political subdivisions of the state. Currently, s. 934.50, F.S., prohibits a: Law enforcement agency from using a drone to gather evidence or other information. Person, or state or local entity, from using a drone to capture images of private property in violation of a person's reasonable expectation of privacy. However, these prohibitions are subject to exceptions, and the bill adds an exception. Specifically, under the bill, s. 943.50, F.S., no longer prohibits a state agency or political subdivision to use a drone for the assessment of damage due to a hurricane, a flood, a wildfire, or any other natural disaster.

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:	CS/SB 616
INTRODUCER:	Rules Committee and Senator Gruters
SUBJECT:	Public Accountancy
DATE:	April 16, 2021
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 616 permits a nonresident Florida-licensed certified public accountant (CPA) to renew his or her license if the CPA has complied with the continuing education requirements in the state in which his or her office is located. However, a nonresident CPA must satisfy Florida's ethics-related continuing education requirements. If the state in which the nonresident CPA's office is located does not have continuing education requirements as a condition for license renewal, the nonresident CPA must comply with the continuing education requirements in Florida.

The bill permits a CPA to place his or her license in a retired status. If a licensee on retired status reenters the workforce in a position that has an association with accounting or any of the CPA services, the licensee automatically loses his or her retired status. A retired CPA may continue to be engaged in specific activities but may not offer professional services that require the use of the CPA title. A retired CPA may reactivate her or his license in a conditional manner determined by the Florida Board of Accountancy, which must require the payment of fees and the completion of any required continuing education.

The bill takes effect July 1, 2021.

II. Present Situation:

Certified Public Accountants

The Florida Board of Accountancy (board) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating and licensing the more than 38,000 active and 2,800 inactive CPAs and more than 5,500 accounting firms in Florida.[1] The Division of Certified Public Accounting provides administrative support to the nine-member board, which consists of seven CPAs and two laypersons.[2]

A CPA is an individual who holds a license to practice public accounting in this state under ch. 473, F.S., or an individual who is practicing public accounting in this state pursuant to the practice privilege granted in s. 473.3141, F.S.[3]

The practice of public accounting includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.[4] To engage in the practice of public accounting,[5] an individual or firm must be licensed pursuant to ss. 473.308 or 473.3101, F.S., and business entities must meet the requirements of s. 473.309, F.S.

CPA Licensing

Section 473.308, F.S., provides licensing requirements for CPAs. To be licensed as a certified public accountant, a person must be of good moral character, pass the licensure exam, and have at least 150 semester hours of education with a focus on accounting and business.[6] CPA licenses must be renewed on a biennial basis through procedures adopted by the DBPR.[7]

License by Endorsement

Individuals who are licensed as a CPA in another state or territory, as well as individuals who are not licensed in another state or territory but have met certain requirements, may apply to the board for licensure by endorsement.[8]

If the applicant is not licensed and has never been licensed in another state or territory, the applicant must meet the education, work experience, and good moral character requirements and have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306, F.S.[9]

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[1] Department of Business and Professional Regulation, *Fiscal Year 2019-2020 Annual Report*, page 20, *available at* www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited Mar. 12, 2021).
[2] Section 473.303, F.S.
[3] *See* s. 473.302(4), F.S. Section 473.3141, F.S., permits a person who does not have an office in Florida to practice public accountancy in this state without obtaining a license under ch. 473, F.S., notifying or registering with the board, or paying a fee if the person meets the required criteria.
[4] Section 473.302(8), F.S.
[5] Section 473.302(8), F.S., defines the terms "practice of," "practicing public accountancy," and "public accounting."
[6] Sections 473.308(2)-(5), F.S.
[7] Section 473.311(2), F.S.
[8] Section 473.308(7), F.S.
[9] Section 473.308(7)(a), F.S., and Fla Admin. Code R. 61H1-29.003(1) (2021).

If the applicant is licensed in another state or territory, the applicant must:

- Have satisfied licensing criteria that were substantially equivalent to the licensure criteria in Florida at the time the license was issued;[10]
- Have passed a national, regional, state, or territorial licensing examination with examination criteria that were substantially equivalent to the examination criteria required in this state and meet the education, work experience, and good moral character requirements, if the criteria for issuance of such a license were not substantially equivalent to Florida's criteria;[11] or
- Have held a valid license in another state or territory for at least 10 years before applying for a license in Florida, have passed a national, regional, state, or territorial licensing examination with examination criteria that were substantially equivalent to the examination criteria required in this state, and meet the education, work experience, and good moral character requirements.[12]

Continuing Education

CPAs, as part of the license renewal procedure, are required to submit proof satisfactory to the board that, during the 2 years prior to the application for renewal, they have successfully completed not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board.[13] The board has the authority to prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.[14]

Not less than 10 percent of the total continuing education hours required by the board shall be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.[15]

Not less than 5 percent of the continuing education shall be in ethics applicable to the practice of public accounting, including a review of the provisions of ch. 455, F.S., relating to the regulations of businesses and professions, ch. 473, F.S., and the related administrative rules. This requirement must be administered by providers approved by the board.[16]

Inactive Licenses

Section 473.313(1), F.S., permits Florida-licensed CPAs to request that their license be placed on inactive status. Licenses can also be placed on inactive status for failing to complete, or failure to report completion of, the continuing education requirements.[17] The board is authorized to adopt rules establishing fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.[18]

[10] Section 473.308(7)(b)1., F.S.
[11] Section 473.308(7)(b)2., F.S.
[12] Section 473.308(7)(b)3., F.S.
[13] Section 473.312(1)(a), F.S.
[14] *Id.*
[15] Section 473.312(1)(b), F.S.
[16] Section 473.312(1)(c), F.S.
[17] Sections 473.313(2) and (3), F.S.
[18] *See* Fla. Admin. Code R. 61H1-33.006 (2021).

A CPA may reactivate an inactive license by paying the DPBR a $250 application fee[19] and providing certification that the CPA has completed the education requirements.[20] If a license that was placed on inactive status for failure to report completed continuing education requirements is inactive on January 1, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.[21]

Retired Status

Florida law does not currently provide CPAs the option of placing licenses into a retired status as an alternative to inactive status.

The American Institute of Certified Public Accountants (AICPA) estimated that, as of 2015, approximately 75 percent of its members would be eligible to retire by 2020.[22] In order to allow retirees to continue to serve their communities without remaining an active CPA in practice, the AICPA's Board of Directors and the National Association of State Boards of Accountancy Board of Directors each approved changes in the Uniform Accountancy Act to provide for the creation of a Retired-CPA status. The changes allow inactive CPAs at least 55 years of age to place the word "retired" after their CPA title, in lieu of "inactive," with appropriate registration with their State Board; offer volunteer tax preparation services; participate in government-sponsored business mentoring programs; and serve on the board of a non-profit organization. All of these activities must be uncompensated, and the applicant must have a license in good standing.[23]

III. Effect of Proposed Changes:

Licensure by Endorsement

The bill amends s. 473.308(7)(a), F.S., referring to applicants for licensure by endorsement who are not licensed in another state, to change the term "another" state to "any" state. The bill does not make the same change throughout s. 473.308, F.S., where the term "another" state is used in several instances.

As amended by the bill, s. 473.308(7)(a), F.S., appears to permit persons who have not been licensed as a CPA in *any* state, including Florida, to qualify for license by endorsement instead of persons who have not been licensed in any state *aside* from Florida.

This change in language would prevent a previously-licensed Florida CPA from using the licensure by endorsement process to regain a license. However, a person from Florida who has not been licensed as a CPA in any state or territory must still satisfy the licensing requirements of this state, whether they do so through the regular licensure qualification process or the licensure by endorsement process.

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[19] Fla. Admin. Code R. 61H1-31.006 (2021).
[20] Section 473.313(3), F.S.
[21] *Id.*
[22] American Institute of Certified Public Accountants, *Proposed Revisions to AICPA/NASBA Uniform Accountability Act 2015, available at* https://www.aicpa.org/content/dam/aicpa/advocacy/state/downloadabledocuments/inactive-retired-exposure-draft-nov-2015.pdf (last visited Mar. 12, 2021).
[23] Uniform Accountancy Act of 2018, s. 6(d).

Continuing Education

The bill creates s. 473.311(1)(b), F.S., to permit a nonresident licensee seeking to renew his or her Florida license to comply with the continuing education requirements of the state in which his or her office is located. Under the bill, a nonresident licensee must still complete no less than 5 percent of the total continuing education hours required in ethics applicable to public accounting as administered by providers approved by the board.

The nonresident licensee must comply with all of Florida's continuing education requirements if the state in which the nonresident licensee's office is located does not have continuing education requirements as a condition for license renewal.

The bill also amends s. 473.312(1)(c), F.S., to require that a majority of the continuing education hours in ethics include a review of the provisions of the provisions of ch. 455, F.S., relating to the regulations of businesses and professions, ch. 473, F.S., and the related administrative rules.

Retired Status

Under current law, a CPA licensed in Florida is not permitted to place his or license in a retired status. The bill amends s. 473.313, F.S., to permit a Florida-licensed CPA to submit an application to the DBPR to place his or her license in a retired status if the licensee:

- Is at least 55 years of age;
- Holds a current active or inactive license; and
- Is in good standing and not the subject of any sanction or disciplinary action.

Under the bill, a licensee in retired status that reenters the workforce in a position associated with accounting, or any related services defined in ss. 473.302(8)(a), (c), and (d), F.S., automatically loses his or her retired status. A CPA on retired status may continue to provide services utilizing accounting skills, as well as tax, management advisory, or consulting services, as defined in s. 473.302(8)(b), F.S., but may not provide certain accounting services that involve expressing an opinion on or preparing financial statements, as defined in ss. 473.302(8)(a), (c), and (d), F.S.

Retired licensees are permitted to use the title of "retired CPA" but may not offer or render professional services that require her or his signature and use of the CPA title, regardless of whether the word "retired" is attached to such title.

The bill authorizes a retired licensee to serve without compensation on a board of directors or board of trustees, provide volunteer tax preparation services, participate in a government-sponsored business mentoring program, and participate in an advisory role for a similar charitable, civic, or nonprofit organizations. A retired licensee may accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the retired licensee to cover such expenses as allowed by law.

Retired licensees are not required to maintain the continuing education requirements set forth in s. 473.312, F.S.

A retired licensee must affirm in writing his or her understanding of the limited types of activities in which he or she may engage while in retired status and that he or she has a professional duty to ensure that he or she holds the professional competencies necessary to participate in such activities.

A retired licensee may reactivate his or her license in a conditional manner determined by the board, which must require the payment of fees and the completion of any required continuing education.

Effective Date

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Section 19(a), Article VII of the State Constitution limits the authority of the legislature to enact legislation that imposes a new state tax or fee by requiring such legislation to be approved by a 2/3 vote in each chamber of the legislature. Section 19(e), Article VII of the Florida Constitution provides that a state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject.

SB 616 permits a licensed CPA in retired status to reactivate his or her license in a conditional manner determined by the Florida Board of Accountancy. The bill requires that the conditions for the reactivation of a license in retired status must include the payment of fees. The board currently has the authority to impose a fee for the reactivation

of an inactive license. Because the bill requires the board to impose a fee of an unknown amount for the reactivation of a license in retired status, it is unclear if the voting and separate bill requirements found in the State Constitution apply to the bill.

B. Private Sector Impact:

Retired CPAs wishing to reactivate their licenses will be subject to reactivation fees in an amount determined by the board.

C. Government Sector Impact:

The DBPR estimates that the technological modifications required to administer the bill can be made with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates s. 473.311(1)(b), F.S., permitting a nonresident licensee seeking a renewal of his or her Florida license to comply with the continuing education requirements of the state in which his or her office is located. It is unclear if these new provisions are intended to apply to territories as well as states. In comparison, existing provisions governing the renewal of CPA licenses in s. 473.308, F.S., include licensure requirements for persons licensed in other states *or* territories.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 473.308, 473.311, 473.312, and 473.313.

IX. Additional Information:

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

CS by Rules on April 16, 2021:
The committee substitute corrects a cross reference in s. 473.313(1)(d), F.S.

B. Amendments:

None.

By the Committee on Rules; and Senator Gruters

595-04310-21 2021616c1

A bill to be entitled

An act relating to public accountancy; amending s. 473.308, F.S.; requiring that certain applicants not be licensed in any state or territory in order to be licensed by endorsement; amending s. 473.311, F.S.; providing license renewal requirements for nonresident licensees; amending s. 473.312, F.S.; requiring that a majority of the hours required for continuing education include specific content; amending s. 473.313, F.S.; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status; providing requirements for such conversion; imposing requirements and prohibitions on retired licensees; authorizing retired licensees to use a specified title under certain circumstances; providing that retired licensees are not required to maintain continuing education requirements; authorizing retired licensees to reactivate their licenses if certain conditions are met; defining the term "retired licensee"; providing an effective date.

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

Section 1. Subsection (7) of section 473.308, Florida Statutes, is amended to read:

473.308 Licensure.—

(7) The board shall certify as qualified for a license by

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

595-04310-21 2021616c1

endorsement an applicant who:

(a) Is not licensed and has not been licensed in any ~~another~~ state or territory and who has met the requirements of this section for education, work experience, and good moral character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

(b)1. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

2. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of subparagraph 1.; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

3. Holds a valid license to practice public accounting issued by another state or territory of the United States for at least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and has met the requirements of this section for good moral character.

Section 2. Subsection (1) of section 473.311, Florida Statutes, is amended to read:

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

473.311 Renewal of license.—

(1)(a) The department shall renew a license issued under s. 473.308 upon receipt of the renewal application and fee and upon certification by the board that the Florida certified public accountant has satisfactorily completed the continuing education requirements of s. 473.312.

(b) A nonresident licensee seeking renewal of a license in this state shall be determined to have met the continuing education requirements in s. 473.312, except for the requirements in s. 473.312(1)(c), if the licensee has complied with the continuing education requirements applicable in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no continuing education requirements for license renewals, the nonresident licensee must comply with the continuing education requirements in s. 473.312.

Section 3. Paragraph (c) of subsection (1) of section 473.312, Florida Statutes, is amended to read:

473.312 Continuing education.—

(1)

(c) Not less than 5 percent of the total hours required by the board shall be in ethics applicable to the practice of public accounting. This requirement shall be administered by providers approved by the board and a majority of the hours shall include a review of the provisions of chapter 455 and this chapter and the related administrative rules.

Section 4. Section 473.313, Florida Statutes, is amended to read:

473.313 Inactive status and retired status.—

(1) A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(a) ~~(2)~~ A license that has become inactive under this subsection ~~(1)~~ or for failure to complete the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The maximum continuing education requirements for reactivating a license are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent.

(b) ~~(3)~~ A license that is delinquent for failure to report completion of the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. Reactivation requires the payment of an application fee as determined by the board and certification by the Florida certified public accountant that the applicant satisfactorily completed the continuing education requirements set forth under s. 473.311. If the license is delinquent on January 1 because of failure to report completed continuing education requirements, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.

(c) ~~(4)~~ Any Florida certified public accountant holding an inactive license may be permitted to reactivate such license in

a conditional manner. The conditions of reactivation shall require the payment of fees and the completion of required continuing education.

(d) ~~(5)~~ Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in paragraph (a) ~~subsection (2)~~, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

(2) A Florida certified public accountant who is at least 55 years of age and currently holds an active or inactive license under this chapter may apply to the department for her or his license to be placed in a retired status. The application must be prescribed by the board and must state that the applicant has no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d). If a licensee who has been granted retired status reenters the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), the licensee automatically loses her or his retired status, except as provided in paragraph (a).

(a) A retired licensee who serves without compensation on a board of directors or board of trustees, provides volunteer tax

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

preparation services, participates in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program, or participates in an advisory role for a similar charitable, civic, or other nonprofit organization shall continue to be eligible for retired status.

(b) The board shall require a retired licensee to affirm in writing her or his understanding of the limited types of activities in which she or he may engage while in retired status and that she or he has a professional duty to ensure that she or he holds the professional competencies necessary to participate in such activities.

(c) Licensees may convert their license to retired status only if they hold a license in good standing and are not the subject of any sanction or disciplinary action.

(d) A retired licensee may accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses, as allowed by law.

(e) A retired licensee may use the title of "retired CPA" on any business card or letterhead or any other printed or electronic document. However, such title may not be applied in such a manner that could confuse the public as to the current status of the licensee. The licensee is not required to have a certificate issued with the word "retired" on the certificate.

(f) A retired licensee is not required to maintain the continuing education requirements under s. 473.312.

(g) A retired licensee may not offer or render professional

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services that require her or his signature and use of the CPA title, regardless of whether the word "retired" is attached to such title.

(h) A retired licensee may reactivate her or his license in a conditional manner determined by board rules. The conditions of reactivation must require the payment of fees and the completion of any required continuing education.

For the purposes of this subsection, the term "retired licensee" means a licensee whose license has been placed in retired status by the department.

Section 5. 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 #616**, relating to Public Accountancy, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Problem the bill addresses: SB 616 permits a nonresident Florida-licensed certified public accountant (CPA) to renew his or her license if the CPA has complied with the continuing education requirements in the state in which his or her office is located

Please let me know if you have any questions.

Sincerely,

Joe Gruters

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

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)

4-16-21
Meeting Date

6 16
Bill Number (if applicable)

Topic Public Accountancy

Amendment Barcode (if applicable)

Name Justin Thames

Job Title Director of Governmental Affairs

Address 119 S. Monroe St., suite 121
Street

Tallchassee FL 32303
City *State* *Zip*

Phone 528-2209

Email justin@flcpa.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 716
INTRODUCER:	Judiciary Committee; Health Policy Committee; and Senator Book
SUBJECT:	Consent for Pelvic Examinations
DATE:	April 15, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 716:

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

The bill is effective July 1, 2021.

II. Present Situation:

The Department of Health

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

Pelvic Examinations

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

Pelvic Examinations on Unconscious or Anesthetized Patients

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

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

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[1] Section 20.43, F.S.
[2] Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH, MQA.
[3] Section 20.43, F.S.
[4] *Supra* note 2; and chs. 458, 459, 464, and 467, F.S.
[5] For examples, *see:* Paul Hsieh, *Pelvic Exams on Anesthetized Women Without Consent: A Troubling and Outdated Practice*, FORBES (May 14, 2018), *available at* https://www.forbes.com/sites/paulhsieh/2018/05/14/pelvic-exams-on-anesthetized-women-without-consent-a-troubling-and-outdated-practice/#74d152df7846 (last visited Mar. 8, 2021); Dr. Jennifer Tsai, *Medical Students Regularly Practice Pelvic Exams on Unconscious Patients. Should They?*, ELLE (June 24, 2019), *available at* https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/ (last visited Mar. 8, 2021); Lorelei Laird, *Pelvic Exams Performed without Patients' Permission Spur New Legislation*, ABA JOURNAL (Sept. 2019), *available at* http://www.abajournal.com/magazine/article/examined-while-unconscious (last visited Mar. 8, 2020); and Amanda Eisenberg, *New Bills Would Ban Pelvic Exams without Consent*, POLITICO (March, 2019), *available at* https://www.politico.com/states/new-york/albany/story/2019/03/13/new-bills-would-ban-pelvic-exams-without-consent-910976 (last visited Mar. 8, 2021).
[6] John Duncan, Dan Luginbill, Matthew Richardson, Robin Fretwell Wilson, *Using Tort Law to Secure Patient Dignity: Often Used as Teaching Tools for Medical Students, Unauthorized Pelvic Exams Erode Patient Rights, Litigation Can Reinstate Them*, 40 TRIAL 42 (Oct. 2004), *available at* https://www.researchgate.net/publication/256066192_Using_Tort_Law_to_Secure_Patient_Dignity (last visited Mar. 8, 2021).

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

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

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

Informed Consent

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

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

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

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

Informed Consent Relating to Forensic Examinations

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

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

A forensic medical examination serves two purposes. The first is to address the medical needs of individuals disclosing sexual assault. This is accomplished, with the patient's consent, by:[21]

- Evaluating and treating injuries;
- Conducting prompt examinations;
- Providing support, crisis intervention, and advocacy;
- Providing prophylaxis against sexually transmitted infections;
- Assessing female patients for pregnancy risk and discussing treatment options, including reproductive health services; and
- Providing follow-up care for medical and emotional needs.

The other purpose is to address justice system needs through forensic evidence collection. This is accomplished by:

- Obtaining a history of the assault;
- Documenting exam findings;
- Properly collecting, handling, and preserving evidence;

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

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

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

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

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

Florida Requirements for Informed Consent

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

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

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

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

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

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

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

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

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

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

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

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

[30] *Id.*

The BOM declined to answer the questions regarding informed consent.

III. Effect of Proposed Changes:

CS/CS/SB 716:

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

The bill effective July 1, 2021.

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.51 of the Florida Statutes.

IX. Additional Information:

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

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

CS by Health Policy on March 17, 2021:
The CS provides two new exceptions to the requirement that written consent be obtained before a pelvic examination may be performed, in addition to those found in current law, for cases in which the examination is administered pursuant to:

- A child protective investigation under ch. 39, F.S.; and
- A criminal investigation of an alleged violation, related to child abuse or neglect, of statutes that address human trafficking, sexual battery, prostitution, lewdness, indecent exposure, or obscenity.

B. Amendments:

None.

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 Judiciary; and Health Policy; and Senator Book

590-03535-21 2021716c2

A bill to be entitled

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

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

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

456.51 Consent for pelvic examinations.—

(1) As used in this section, the term "pelvic examination" means a manual ~~the series of tasks that comprise an~~ examination of the organs of the female reproductive system using ~~vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs using any combination of modalities, which may include, but need not be limited to,~~ the health care provider's gloved hand or instrumentation. The term does not include a visual assessment, imaging, or a nondiagnostic medical or surgical procedure.

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

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

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

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

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

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

(3) A health care practitioner, a medical student, or any other student receiving training as a health care practitioner who is providing care to a pregnant woman having contractions in a facility licensed under chapter 395 need only obtain written consent from the patient to perform the initial pelvic

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

examination. The written consent form must inform the patient that multiple pelvic examinations may be conducted during the course of her care and treatment at the facility.

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

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 29, 2021

I respectfully request that **Senate Bill 716**, relating to Consent for Pelvic Examinations, be placed on the next committee agenda.

The bill is an attempt to address concerns with a bill that I passed last session regarding obtaining written consent to conduct a pelvic examination.

These changes will help doctors provide clear standards for when a pelvic exams can and should be conducted, in the hope that informed consent of the patient remains the highest priority.

Thank you for your consideration.

Lauren Book

Senator Lauren Book
Florida Senate, District 32

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/21
Meeting Date

716
Bill Number (if applicable)

Topic Consent for Pelvic Exam

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title

Address 625 E Bernard ST
Street

Phone 287-9280

City *State* *Zip*

Email barbaradevane1@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Rules 4-26-21
Meeting Date

716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Pelvic Exams

Name Toni Large

Job Title

Address 1100 Brookwood DR
Street

Tallahassee, FL 32308
City *State* *Zip*

Phone (850) 556-1461

Email toni@largestrategies.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida College of Emergency Physicians

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)

4-16
Meeting Date

716
Bill Number (if applicable)

Topic Consent for Pelvic Examinations

Amendment Barcode (if applicable)

Name Jarrod Fowler

Job Title Director of Health Care Policy

Address 143a Piedmont Dr. E
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 904-525-4446

Email jfowler@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida 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)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/16/2021
Meeting Date

716
Bill Number (if applicable)

Topic CS/CS/SB 716 - Consent for Pelvic Examinations

Amendment Barcode (if applicable)

Name Amy Young

Job Title

Address 1400 Centrepark Blvd, Ste 1010
Street

Phone 561-253-3232

West Palm Beach FL 33401
City *State* *Zip*

Email amylobby@ballardpartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing VitalMD Group Holding, LLC

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

4/16/2021
Meeting Date

716
Bill Number (if applicable)

Topic CS/CS/SB 716 - Consent for Pelvic Examinations

Amendment Barcode (if applicable)

Name Amy Young

Job Title

Address 1400 Centrepark Blvd, Ste 1010
Street

Phone 561-253-3232

West Palm Beach FL 33401
City *State* *Zip*

Email amylobby@ballardpartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Congress of Obstetricians and Gynecologists, District XII

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)

Fri - 9am

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/16/21
Meeting Date

716
Bill Number (if applicable)

Topic Consent for Pelvic Examinationse

Amendment Barcode (if applicable)

Name Steve Winn

Job Title Executive 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.

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

4/16/2021
Meeting Date

716
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic CONSENT FOR PELVIC EXAMINATIONS

Name JAN GORRIE

Job Title CONSULTANT

Address 201 E PARK AVE, 5TH FLOOR
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850.577.0444

Email jan@ballardpartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing COUNCIL OF FLORIDA MEDICAL SCHOOL DEANS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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 768
INTRODUCER:	Rules Committee; Children, Families, and Elder Affairs Committee; and Senator Baxley
SUBJECT:	Administration of Vaccines
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Brown	HP	**Favorable**
2.	Moody	Cox	CF	**Fav/CS**
3.	Rossitto-Van Winkle	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 768 expands the scope of authority for certified pharmacists and pharmacy interns to administer vaccines within the framework of an established protocol with a supervising physician licensed under ch. 458 or 459, F.S.

The bill authorizes pharmacists and pharmacy interns who are certified by the Board of Pharmacy (BOP) to have completed specified educational and other requirements, to administer to adults any immunization or vaccine that is:

- Listed in the federal Centers for Disease Control and Prevention's (CDC) Adult Immunization Schedule as of April 30, 2021;
- Recommended by the CDC for international travel as of April 30, 2021; or
- Licensed for use in the United States, or authorized for emergency use, by the federal Food and Drug Administration (FDA) as of April 30, 2021.

The BOP may authorize additional immunizations and vaccines that may be administered to adults by certified pharmacists and pharmacy interns as they are added to the lists of approved immunizations and vaccines as denoted in the paragraph above.

Additionally, the bill authorizes pharmacists who are certified to administer vaccines and immunizations to adults to also administer influenza vaccines to children seven years of age or older.

The bill may have a fiscal impact on state government. *See* Section V of this analysis.

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

II. Present Situation:

Immunizations – U. S. Department of Health and Human Services

The Office of Infectious Disease and HIV/AIDS Policy (Office), in the U. S. Department of Health and Human Services (HHS), oversees the National Vaccine Program, which provides strategic leadership for vaccine and immunization activities among federal agencies and to the states and other stakeholders, to help reduce the burden of preventable infectious diseases. The Office's services include the National Vaccine Strategic Plans (NVSP) and National Vaccine Advisory Committee (NVAC).[1] The NVSP for 2021-2025, released January 19, 2021, is the newest roadmap to coordinate vaccine development and use and is based on the NVAC's recommendations that revise the Standards for Adult Immunization Practices.[2]

The Centers for Disease Control and Prevention's Immunization Recommendations

The CDC, under the Secretary of HHS,[3] sets the adult and childhood immunization and vaccination schedules based on the recommendations from the Advisory Committee on Immunization Practices (ACIP).[4] The ACIP works with professional organizations, such as the American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the American College of Physicians, to develop annual childhood and adult immunization schedules.[5] The CDC reviews the ACIP's recommendations and, if approved, they are published as the CDC's official recommendations for immunizations for the population.[6] The current recommended immunization schedule for persons 18 years of age and older includes:[7]

- Influenza (annually) (IIV, RIV or LAIV);

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[1] U.S. Department of Health & Human Services, *Vaccines & Immunizations*, *available at* https://www.hhs.gov/vaccines/index.html (last visited Mar. 30, 2021).
[2] U.S. Department of Health & Human Services, *Vaccines National Strategic Plan*, *available at* https://www.hhs.gov/vaccines/vaccines-national-strategic-plan/index.html (last visited Mar. 30, 2021).
[3] U.S. Department of Health & Human Service, HHS Leadership, *Office of the Secretary Leaders*, *available at* https://www.hhs.gov/about/leadership/index.html#opdiv (last visited Mar. 30, 2021).
[4] Center for Disease Control and Prevention, Advisory Committee on Immunization Practices (ACIP), *Role of the Advisory Committee on Immunization Practices in CDC's Vaccine Recommendations*, *available at* https://www.cdc.gov/vaccines/acip/committee/role-vaccine-recommendations.html (last visited Mar. 30, 2021).
[5] Centers for Disease Control and Prevention, Advisory Committee on Immunization Practices (ACIP), *ACIP Recommendations*, *available at* https://www.cdc.gov/vaccines/acip/recommendations.html (last visited Mar. 30, 2021).
[6] *Id.*
[7] Centers for Disease Control and Prevention, *Recommended Adult Immunization Schedule for Ages 19 Years or Older, United States, 2020*, *available at* https://www.cdc.gov/vaccines/schedules/hcp/imz/adult.html (last visited Mar. 30, 2021). The schedule provides the recommended age, as well as the administration intervals for vaccines that require multiple doses. Some vaccines are recommended only for populations with special situations that put those populations at higher risk.

- Measles, mumps, rubella (MMR) (if patient is born in 1957 or later);
- Zoster (ZVL) or (RZV);
- Pneumococcal polysaccharide (PPSV23);
- Haemophilus influenza Type B (Hib);
- Hepatitis B (HepB);
- Varicella (VAR) (if patient is born 1980 or later);
- Tetanus, diphtheria, pertussis (Tdap or Td) (booster every 10 years);
- Human papillomavirus (HPV);
- Pneumococcal conjugate (PCV13);
- Hepatitis A (HepA);
- Meningococcal A, C, W, Y (MenACWY); and
- Meningococcal B (MenB).

New vaccines are considered for addition to the schedule after being licensed by the FDA.[8] Not all newly licensed vaccines are added to the schedule. Some licensed vaccines are only recommended for people who are traveling to areas where certain vaccine-preventable diseases occur, such as yellow fever, cholera, dengue, Japanese encephalitis, plague, rabies, smallpox, and typhoid.[9]

CDC Health Information for International Travel

The CDC's *Health Information for International Travel*, commonly called the Yellow Book, is published biennially by the CDC as a reference to advise international travelers about health risks.[10] The Yellow Book includes the CDC's most current travel health guidelines, including pre-travel vaccine recommendations and destination-specific health advice. The Yellow Book is authored by subject-matter experts both within and outside the CDC and its guidelines are evidence-based and supported by best practices.[11]

Certain vaccinations are recommended by the CDC to protect international travelers from illness and prevent the importation of infectious diseases across international borders. The Yellow Book recommends that persons traveling internationally should be up to date on all CDC-recommended vaccines.[12] Additionally, the Yellow Book recommends additional vaccinations based on a traveler's destination and other factors.

[8] College of Physicians of Philadelphia, *The History of Vaccines: The Development of the Immunization Schedule*, *available at* http://www.historyofvaccines.org/content/articles/development-immunization-schedule (last visited Mar. 30, 2021).
[9] *Id*. For a complete list of FDA-licensed vaccines, *see* U.S. Food & Drug Administration, *Vaccines Licensed for Use in the United States*, (last rev. Feb. 10, 2021), *available at* https://www.fda.gov/vaccines-blood-biologics/vaccines/vaccines-licensed-use-united-states (last visited Mar. 30, 2021).
[10] Centers for Disease Control and Prevention. *CDC Yellow Book 2020: Health Information for International Travel*, *available at* https://wwwnc.cdc.gov/travel/page/yellowbook-home (last visited Mar. 30, 2021) (hereinafter cited as "CDC Yellow Book").
[11] *Id.*
[12] CDC Yellow Book.

Florida's Immunization Policy

Communicable Disease Prevention and Control

The Department of Health (DOH) is responsible for the state's public health system.[13] As part of fulfilling its public health mission, the DOH is responsible for conducting a communicable disease prevention and control program. A communicable disease is any disease caused by the transmission of a specific infectious agent, or its toxic products, from an infected person, animal, or the environment to a susceptible host, either directly or indirectly.[14]
The DOH communicable disease program includes, but need not be limited to, programs for the prevention and control of:

- Tuberculosis;
- Human immunodeficiency virus (HIV) infection;
- Acquired Immune Deficiency Syndrome (AIDS);
- Sexually transmissible diseases;
- Communicable diseases of public health significance; and
- Vaccine-preventable diseases,[15] including programs to immunize school children[16] and the development of an automated, electronic, and centralized database or registry for immunization records.[17]

The DOH may adopt rules related to the prevention and control of communicable diseases and the administration of the immunization registry. Such rules may include procedures for:[18]

- Investigating disease;
- Timeframes for reporting disease;
- Definitions;
- Procedures for managing specific diseases;
- Requirements for follow-up reports on disease exposure; and
- Procedures for providing access to confidential information necessary for disease investigations.

Immunizations for Adults Recommended by the DOH

The DOH recommends the following vaccines for adults:[19]

- Human Papillomavirus (HPV);
- Tetanus-diphtheria-pertussis (Tdap);
- Tetanus-diphtheria (Td) booster every ten years;

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[13] Section 381.001, F.S.
[14] Section 381.003(1), F.S.
[15] Measles, mumps, rubella, pertussis, diphtheria, tetanus, polio, varicella, pneumococcal disease, hepatitis A, hepatitis B, influenza, meningococcal and Haemophilus influenza type b (Hib) are all preventable by vaccine. *See* Department of Health, *Vaccine Preventable Diseases, available at* http://www.floridahealth.gov/diseases-and-conditions/vaccine-preventable-disease/index.html (last visited Mar. 30, 2021).
[16] *See* s. 1003.22(3)-(11), F.S.
[17] Section 381.003(1), F.S.
[18] Section 381.003(2), F.S.
[19] The Florida Department of Health, *Don't Miss Opportunities to Vaccinate!*, *available at* http://www.floridahealth.gov/programs-and-services/immunization/publications/_documents/opportunities-to-vaccinate-adult.pdf (last visited Mar. 30, 2021).

- Hepatitis A;
- Meningococcal;
- Measles-mumps-rubella (MMR);
- Varicella (chickenpox);
- Seasonal influenza;
- Zoster (shingles); and
- Pneumococcal.

Required Immunizations for Children

Each school district board and non-public school governing body is required to ensure that every child entering school in kindergarten through grade 12 must present or have on file a Florida Certificate of Immunization (FCI) before entering or enrolling in school.[20] Children entering, attending, or transferring to Florida public or non-public schools, kindergarten through grade 12, must have on file as part of their permanent school record[21] an FCI documenting that they have had the following immunizations: [22]

- Four or five doses of DTaP (Diphtheria-tetanus-acellular pertussis);
- Four or five doses of IPV (Inactivated polio vaccine);
- Two doses of MMR (Measles-mumps-rubella);
- Three doses of Hep B (Hepatitis B);
- One Tdap (Tetanus-diphtheria-acellular pertussis);
- Two doses of Varicella (unless there is a history of varicella disease documented by a health care provider); and
- If entering a public or non-public school in seventh grade or later, an additional dose of Tdap (Tetanus-diphtheria-acellular pertussis).

Private health care providers may grant a temporary medical exemption (TME), documented on the FCI form,[23] for those who are in the process of completing any necessary immunizations. The TME incorporates an expiration date after which the exemption is no longer valid, and the immunizations must be completed before or at that time. A permanent medical exemption may be granted if a child cannot be fully immunized due to medical reasons. In such case, the child's physician must state in writing the reasons for the exemption on the FCI form, based on valid clinical reasoning or evidence.[24]

[20] Section 1003.22(4), F.S.
[21] *Id*.
[22] *See also* Department of Health, *School Immunization Requirements* (last modified Mar. 8, 2021), *available at* http://www.floridahealth.gov/programs-and-services/immunization/children-and-adolescents/school-immunization-requirements/index.html#childcare (last visited Mar. 30, 2021).
[23] Department of Health, Form DH-680, *Florida Certification of Immunizations* (Jul. 2010) (on file with Senate Health Policy Committee).
[24] Department of Health, *Exemptions from Required Immunizations*, (last updated Sept. 18, 2019), *available at* http://www.floridahealth.gov/programs-and-services/immunization/children-and-adolescents/immunization-exemptions/index.html (last visited Mar. 30, 2021).

A request for a religious exemption from immunizations requires the parent or guardian to provide the school or facility with a religious exemption immunization form.[25] The form is issued only by county health departments and only for children who are not immunized because of the family's religious tenets or practices. Exemptions for personal or philosophical reasons are not permitted under Florida law.[26]

The Practice of Pharmacy

The BOP, in conjunction with the DOH, regulates the practice of pharmacists and registered pharmacist interns pursuant to ch. 465, F.S.[27]

Licensure

To be licensed as a pharmacist in Florida, a person must:[28]

- Complete an application and remit an examination fee;
- Be at least 18 years of age;
- Hold a degree from an accredited and approved school or college of pharmacy;[29]
- Have completed a BOP-approved internship; and
- Successfully complete the BOP-approved examination.

A pharmacist must complete at least 30 hours of BOP-approved continuing education during each biennial licensure renewal period.[30] Pharmacists who are certified to administer vaccines or epinephrine auto-injections must complete a three-hour continuing education course on the safe and effective administration of vaccines and epinephrine injections, as a part of their licensure renewal.[31]

Scope of Pharmacy Practice

In Florida, the practice of the profession of pharmacy includes:[32]

- Compounding, dispensing, and consulting concerning the contents, therapeutic values, and uses of a medicinal drug;
- Consultation concerning therapeutic values and interactions of patented or proprietary preparations;

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[25] Department of Health, Form DH 681, *Religious Exemption From Immunization,* (Jul. 2008) puts a parent or guardian on notice that any child not immunized against a communicable disease that has been declared a communicable disease emergency will be temporarily excluded from school until such time as the county health department says the child can return. (on file with the Senate Health Policy Committee).

[26] Department of Health, Immunization Section, Bureau of Communicable Diseases, *Immunization Guidelines, Florida Schools, Childcare Facilities and Family Daycare Homes* (Mar. 2013), *available at* http://www.floridahealth.gov/%5C/programs-and-services/immunization/schoolguide.pdf (last visited Mar. 30, 2021).

[27] Sections 465.004 and 465.005, F.S.

[28] Section 465.007, F.S. The DOH may also issue a license by endorsement to a pharmacist who is licensed in another state upon meeting the applicable requirements set forth in law and rule. *See* s. 465.0075, F.S.

[29] If the applicant has graduated from a four-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, the applicant must demonstrate proficiency in English, pass the BOP-approved Foreign Pharmacy Graduate Equivalency Examination, and complete a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a DOH-licensed pharmacist.

[30] Section 465.009, F.S.

[31] Section 465.009(6), F.S.

[32] Section 465.003(13), F.S.

- Monitoring a patient's drug therapy and assisting the patient in the management of his or her drug therapy;
- Reviewing, and making recommendations regarding the patient's drug therapy and health care status in communication with the patient's prescribing health care provider as authorized by the patient;
- Initiating, modifying, or discontinuing drug therapy for a chronic health condition under a collaborative pharmacy practice agreement;[33]
- Transmitting information from prescribers to their patients;
- Administering antipsychotropic medications by injection;[34]
- Preparing prepackaged drug products in facilities holding Class III institutional facility permits;[35]
- Ordering and dispensing over-the-counter drugs approved by the FDA;[36]
- Ordering and dispensing within his or her professional judgment, subject to specified conditions:[37]
  - Certain oral analgesics for mild to moderate pain;
  - Anti-nausea preparations;
  - Certain antihistamines and decongestants;
  - Certain topical antifungal/antibacterial;
  - Topical anti-inflammatory preparations containing an amount of hydrocortisone not exceeding 2.5 percent;
  - Otic antifungal/antibacterial;
  - Salicylic acid;
  - Vitamins;
  - Ophthalmics;
  - Certain histamine H2 antagonists;
  - Acne products; and
  - Topical antivirals for herpes simplex infections of the lips.

Pharmacist Authorization to Administer Immunizations and Epinephrine Auto-Injections

A pharmacist may be authorized to administer immunizations to adults, according to CDC guidelines, and epinephrine auto-injections to address unforeseen allergic reactions, within the framework of an established protocol with a supervising physician. A pharmacist must become certified to administer immunizations and vaccines that are:

- Listed in the CDC Adult Immunization Schedule as of February 1, 2015;
- Listed in the Adult Immunization Schedule after February 1, 2015, and authorized by BOP rule;
- Recommended by the CDC for international travel as of July 1, 2015;
- Recommended by the CDC for international travel after July 1, 2015, and authorized by BOP rule;[38] or

[33] Section 465.1865, F.S.
[34] Section 465.1893, F.S.
[35] A Class III institutional pharmacy are those pharmacies affiliated with a hospital. *See* s. 465.019(2)(d), F.S.
[36] Section 465.186, F.S.
[37] Fla. Admin. Code R. 64B16-27.220 (2020).
[38] Section 465.189(1)(b), F.S.

- Approved by the BOP in response to an emergency declared by the Governor.[39]

To be certified to administer vaccines, a pharmacist must:

- Enter into a written protocol with a supervising medical or osteopathic physician, and the protocol must:[40]
  - Specify the categories of patients and patient conditions for which the pharmacist may administer vaccines;
  - Be appropriate to the pharmacist's training and certification for administering the vaccine;
  - Outline the process and schedule for the review of the administration of vaccines by the pharmacist under the written protocol; and
  - Be submitted to the BOP;
- Successfully complete a BOP-approved vaccine administration certification program that consists of at least 20 hours of continuing education;[41]
- Pass an examination and demonstrate vaccine administration technique;[42]
- Maintain and make available patient records using the same standards for confidentiality and retention of such records as required by s. 456.057, F.S., and maintain the records for at least five years;[43] and
- Maintain at least $200,000 of professional liability insurance.[44]

A pharmacist may also administer epinephrine using an auto-injector delivery system within the framework of the established protocol under a supervising physician in order to address any unforeseen allergic reactions.[45]

A certified pharmacist is not authorized under Florida Statutes to administer immunizations to children.

Pharmacy Interns

To become a pharmacy intern, a person must be certified by the BOP and enrolled in an intern program at an accredited school or college of pharmacy or as a graduate of an accredited school or college of pharmacy and not yet licensed as a pharmacist in Florida.[46] The BOP's rules outline the registration process for pharmacy interns and the internship program requirements for U.S. pharmacy students or graduates and foreign pharmacy graduates.[47]

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[39] Section 465.189, (1)(c), F.S.
[40] Section 465.189(7), F.S.
[41] Section 465.189(6), F.S., Fla. Admin. Code R. 64B16-26.1031 (2020), provides more detail regarding subject matter that must be included in the certification course.
[42] *Id*.
[43] Section 456.057, F.S., requires certain health care practitioners to develop and implement policies, standards, and procedures to protect the confidentiality and security of medical records, provides conditions under which a medical record may be disclosed without the express consent of the patient, provides procedures for disposing of records when a practice is closing or relocating, and provides for enforcement of its provisions.
[44] Section 465.189(3), F.S.
[45] Section 465.189(2), F.S. A certified registered pharmacy intern is not permitted to administer epinephrine auto-injections.
[46] Section 465.013, F.S.
[47] Fla. Admin. Code R. 64B16-26.2032 (U.S. pharmacy students/graduates); Fla. Admin. Code R. 64B16-26.2033 (foreign pharmacy graduates).

A pharmacist is responsible for any delegated act performed by a registered pharmacy intern employed or supervised by the pharmacist.[48]

To administer vaccines, a registered pharmacy intern must complete the same BOP-approved vaccine administration certification program as the pharmacist and also be supervised by a certified pharmacist, at a ratio of one pharmacist to one certified registered intern. Like pharmacists, pharmacy interns are not authorized under Florida Statutes to administer immunizations to children.[49]

Access to Vaccines During the COVID-19 Pandemic

On March 9, 2020, Governor DeSantis issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida as a result of COVID-19, allowing for the suspension of certain statutes and rules that prevent, hinder, or delay any necessary action in dealing with the state of emergency caused by COVID-19.[50]

Federal Action to Authorize Pharmacists to Vaccinate Children

On August 19, 2020, the HHS issued an amendment to the declaration published on March 17, 2020,[51] relating to the Public Readiness and Emergency Preparedness Act (PREP Act).[52] The amendment authorizes, effective August 24, 2020, state-licensed pharmacists (and pharmacy interns acting under their supervision) to order and administer vaccines to individuals ages three through 18 years, nationwide, subject to several requirements:[53]

- The vaccine must be authorized or approved by the FDA.
- The vaccination must be ordered and administered according to the ACIP's standard immunization schedule.[54]
- The licensed pharmacist must complete a practical training program of at least 20 hours that is approved by the Accreditation Council for Pharmacy Education (ACPE).

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[48] Fla. Admin. Code R. 64B16-27.430 (2020).
[49] Section 465.189(6), F.S.
[50] State of Florida, Office of the Governor, *Executive Order*, Number 20-52, *available at* https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited Mar. 30, 2021).
[51] 85 Fed. Reg. 15198 (2020).
[52] The PREP Act authorizes the Secretary of Health and Human Services the Secretary to issue a Declaration to provide liability immunity to certain individuals and entities against any claim of loss caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures Covered Countermeasures, except for claims involving ''willful misconduct'' as defined in the PREP Act. Under the PREP Act, a Declaration may be amended as circumstances warrant. The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, section 2.
[53] 85 Fed. Reg. 136, 52136 - 52141 (2020); *see* https://www.hhs.gov/about/news/2020/08/19/hhs-expands-access-childhood-vaccines-during-covid-19-pandemic.html (last visited Mar. 30, 2021).
[54] Centers for Disease Control and Prevention, Immunization Schedules: *For Health Care Providers, available at* https://www.cdc.gov/vaccines/schedules/hcp/index.html (last visited Mar. 30, 2021). The immunization schedule recommends that certain vaccines be administered only to children of a certain age. For example, the second dose of both the measles, mumps, and rubella vaccine, as well as the varicella vaccine, should not be administered until a child is between four and six years old. See *Recommended Child and Adolescent Immunization Schedule for ages 18 years or younger*, United States, 2020, CDC (Jan. 29, 2020), *available at* https://www.cdc.gov/vaccines/schedules/downloads/child/0-18yrs-child-combined-schedule.pdf (last visited Mar. 30, 2021).

- The licensed or registered pharmacy intern must complete a practical training program that is approved by the ACPE.
- The licensed pharmacist and licensed or registered pharmacy intern must have current certificates in basic cardiopulmonary resuscitation.

According to the announcement of the amendment, this federal action was for the purpose of increasing access to lifesaving childhood vaccines and decreasing the risk of vaccine-preventable disease outbreaks so children across the United States could return to daycare, preschool, and school.[55]

State Emergency Action to Authorize Pharmacists to Vaccinate Children

On October 1, 2020, the State Surgeon General issued an emergency order,[56] pursuant to authority granted by Executive Order No. 20-52, suspending the provision of s. 465.189(1), F.S., to the extent necessary to authorize a certified pharmacist, or a certified, registered pharmacy intern, to administer vaccines approved or licensed by the FDA to individuals under 18 years of age if the vaccine is approved for use in individuals under 18 years of age and upon receipt of a medical consent for the minor signed by a person who has the power to consent to the minor's medical care or treatment.

The Surgeon General's emergency order also authorized such practitioners to order and administer vaccines according to the CDC's ACIP immunization schedules and any vaccine approved by the FDA to immunize individuals against COVID-19.

This emergency order remains in effect until Executive Order No. 20-52, including any extensions, expires or is otherwise modified by order of the State Surgeon General.

III. Effect of Proposed Changes:

CS/CS/SB 768 expands the scope of persons to whom certified pharmacists, under a protocol with a supervising physician, may administer an influenza vaccine. Under the bill, a certified pharmacist may administer influenza vaccines to children seven years of age and older.

For adult vaccinations and immunizations that certified pharmacists and pharmacy interns are authorized to administer, the bill revises the date for which the CDC has approved its Adult Immunization Schedule and its recommendations for international travel, and the dates in statute are changed to April 30, 2021, instead of February 1, 2015, and July 1, 2015, respectively.

The bill also authorizes certified pharmacists and pharmacy interns to administer to adults immunizations or vaccines that are licensed for use in the U.S., or which have been authorized for emergency use, by the FDA as of April 30, 2021, and provides that the BOP may authorize

[55] U.S. Department of Health and Human Services, *HHS Expands Access to Childhood Vaccines during COVID-19 Pandemic, available at* https://www.hhs.gov/about/news/2020/08/19/hhs-expands-access-childhood-vaccines-during-covid-19-pandemic.html (last visited Mar. 30, 2021).
[56] State of Florida, Department of Health, State Surgeon General, *Emergency Order*, (Oct. 1, 2020) DOH No. 20-014, *available at* https://floridahealthcovid19.gov/wp-content/uploads/2020/10/DOH-Emergency-Order-No-20-014.pdf (last visited Mar. 30, 2021).

by rule additional immunizations or vaccines as they become so licensed or authorized by the FDA.

The bill 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:

None.

C. Government Sector Impact:

By making the influenza vaccine available to children seven years of age or older from certified pharmacists, and by expanding the number of authorized immunizations and vaccines that certified pharmacists and pharmacy interns may administer to adults, the bill may result in additional vaccinations being administered in the Medicaid program, which may increase the program's vaccination costs. The fiscal impact is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 465.189 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 April 16, 2021:
The CS modifies the underlying bill's language in order to maintain the statutory structure of current law and revises the dates pertaining to federal approval or recommendation to April 30, 2021, instead of either February 1, 2015, or July 1, 2015, as in current law.

CS by Children, Families, and Elder Affairs on March 30, 2021:
The committee substitute:

- Authorizes qualified pharmacists to administer the influenza vaccine to children seven years of age and older;
- Revises the list of immunizations that pharmacists and registered pharmacy interns are permitted to administer to adults;
- Authorizes pharmacists to administer those vaccines or immunizations lists in the 2021, as opposed to the 2015, CDC Recommended Immunization Schedule for adults and the CDC's Health Information for International Travel; and
- Permits a pharmacist, or a registered intern under the supervision of a pharmacist, to administer any vaccine that has been licensed, or authorized for emergency use, by the FDA and allows the BOP to authorize by rule additional vaccines that may be so licensed or authorized by the FDA.

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 Rules; and Children, Families, and Elder Affairs; and Senator Baxley

595-04296-21 2021768c2

A bill to be entitled

An act relating to the administration of vaccines; amending s. 465.189, F.S.; revising the specified immunizations or vaccines that certified pharmacists and registered interns may administer to adults; authorizing certain pharmacists to administer influenza vaccines to individuals 7 years of age or older under certain circumstances; providing an effective date.

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

Section 1. Present subsections (2) through (8) of section 465.189, Florida Statutes, are redesignated as subsections (3) through (9), respectively, a new subsection (2) is added to that section, and subsection (1) and present subsection (6) of that section are amended, to read:

465.189 Administration of vaccines and epinephrine autoinjection.—

(1) In accordance with guidelines of the Centers for Disease Control and Prevention for each recommended immunization or vaccine, a pharmacist~~,~~ or a registered intern under the supervision of a pharmacist who is certified under subsection (7)~~(6),~~ may administer the following immunizations or vaccines to an adult within the framework of an established protocol under a supervising physician licensed under chapter 458 or chapter 459:

(a) Immunizations or vaccines listed in the Adult Immunization Schedule as of April 30, 2021 ~~February 1, 2015~~, by

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

595-04296-21 2021768c2

the United States Centers for Disease Control and Prevention. The board may authorize~~,~~ by rule~~,~~ additional immunizations or vaccines as they are added to the Adult Immunization Schedule.

(b) Immunizations or vaccines recommended by the United States Centers for Disease Control and Prevention for international travel as of April 30, 2021 ~~July 1, 2015~~. The board may authorize~~,~~ by rule~~,~~ additional immunizations or vaccines as they are recommended by the United States Centers for Disease Control and Prevention for international travel.

(c) Immunizations or vaccines licensed for use in the United States, or which have been authorized for emergency use, by the United States Food and Drug Administration as of April 30, 2021. The board may authorize by rule additional immunizations or vaccines as they are so licensed or authorized.

(d)~~(c)~~ Immunizations or vaccines approved by the board in response to a state of emergency declared by the Governor pursuant to s. 252.36.

A registered intern who administers an immunization or vaccine under this subsection must be supervised by a certified pharmacist at a ratio of one pharmacist to one registered intern.

(2) A pharmacist who is certified under subsection (7) may administer influenza vaccines to individuals 7 years of age or older within the framework of an established protocol under a supervising physician licensed under chapter 458 or chapter 459.

(7)~~(6)~~ Any pharmacist or registered intern seeking to administer vaccines ~~to adults~~ under this section must be certified to administer such vaccines pursuant to a

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

certification program approved by the Board of Pharmacy in consultation with the Board of Medicine and the Board of Osteopathic Medicine. The certification program shall, at a minimum, require that the pharmacist attend at least 20 hours of continuing education classes approved by the board and the registered intern complete at least 20 hours of coursework approved by the board. The program shall have a curriculum of instruction concerning the safe and effective administration of such vaccines, including, but not limited to, potential allergic reactions to such vaccines.

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 30, 2021

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

Dear Chair Passidomo,

I would like to request CS/SB 768 Immunizations be heard in the next Rules Committee meeting.

This bill does the following:

- Authorizes qualified pharmacists to administer the influenza vaccine only to individuals age 7 and older.
- Revises the list of immunizations that qualified pharmacists and registered pharmacy interns can provide to adults.
- Authorizes pharmacists to administer those vaccines or immunizations listed in the 2021 CDC Recommended Immunization Schedule for adults and the CDC Health Information for International Travel.
- Authorizes a pharmacist, or a registered intern under the supervision of a pharmacist, to administer any vaccine that has been licensed or authorized for emergency use by the FDA and allows the Board to authorize by rule, additional vaccines that may be administered as they are recommended by the CDC, or licensed or authorized by emergency use by the FDA.

Thank you for your favorable consideration.

Onward & Upward,

Senator Dennis K. Baxley
Senate District 12

DKB/dd

REPLY TO:
☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
☐ 320 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

4/16/2021 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 768

Meeting Date *Bill Number (if applicable)*

Topic Administration of vaccines *Amendment Barcode (if applicable)*

Name JAKE FARMER

Job Title Director of Government Affairs

Address 227 S Adams Street Phone 352 359 6835

Street

Tallahassee FL 32301 Email Jake@frf.org

City *State* *Zip*

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

APPEARANCE RECORD

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

768

Meeting Date | *Bill Number (if applicable)*

Topic Administration of Vaccines

Amendment Barcode (if applicable)

Name Karen Mazzola

Job Title Legislation Committee chair

Address 1747 Orlando Central Parkway Phone 407-855-7604

Street

Orlando FL 32809 Email legislation@floridapta.org

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Florida Parent Teacher 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)

4/16/21
Meeting Date

768
Bill Number (if applicable)

Topic Administration of Vaccines

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

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:	CS/CS/SB 804
INTRODUCER:	Community Affairs Committee; Children, Families, and Elder Affairs Committee; and Senator Harrell
SUBJECT:	Substance Abuse Services
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Hackett	Ryon	CA	**Fav/CS**
3.	Delia	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 804 makes several changes to provisions governing the licensure and regulation of substance abuse treatment programs, including recovery residences.

The bill makes it a third degree felony to falsify information, or to withhold material facts, on an application for licensure as a substance abuse service provider.

The bill authorizes the Department of Children and Families (DCF) to suspend a service provider's license for failing to pay, within 60 days of a date set by the DCF, administrative fines and accrued interest related to disciplinary action taken against the service provider. The bill also mandates that a service provider pay fines and accrued interest resulting from violations of patient referral prohibitions within 60 days of a date specified by the DCF. If a service provider fails to remit payment within 60 days, the bill requires the DCF to immediately suspend the service provider's license.

The bill also broadens the eligibility for exemption from employment disqualification for certain prior criminal offenses to specified employees of an applicant recovery residence and to applicant recovery residence administrators.

The bill prohibits certain classes of dwellings that are used as recovery residences from having their occupancy category changed or being reclassified for the purpose of enforcement of the

Florida Building Code and fro the Florida Fire Prevention Code's requirement for installation of fire sprinklers.

The DCF's Office of Administrative Services estimates there will be an indeterminate negative fiscal impact to both private substance abuse service providers and state government.

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

II. Present Situation:

Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder (SUD) is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.[5]

In 2018, approximately 20.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 14.8 million people diagnosed with alcohol use disorder and 8.1 million people diagnosed with drug use disorder.[6] The most common SUD diagnoses in the United States are related to the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.[7]

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[1] The World Health Organization, *Mental Health and Substance Abuse*, available at https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse; (last visited February 27, 2021); the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics (last visited February 21, 2021).
[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at https://www.naatp.org/resources/clinical/substance-use-disorder (last visited February 21, 2021).
[3] The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited February 21, 2021).
[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited February 21, 2021).
[5] *Id*.
[6] The SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, p. 2, available at https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf (last visited February 21, 2021).
[7] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited February 21, 2021).

Substance Abuse Treatment in Florida

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[8] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[9] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[10] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[11] In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[12]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[13] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[14] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[15]

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.[16] The DCF provides treatment for SUD through a community-based provider system offering detoxification, treatment, and recovery support for individuals affected by substance misuse, abuse, or dependence.[17]

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.[18]

[8] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.
[13] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[14] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited February 21, 2021) (hereinafter cited as "Fundamentals of the Marchman Act").
[15] *Id*.
[16] *See* chs. 394 and 397, F.S.
[17] The DCF, *Treatment for Substance Abuse*, available at https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml (last visited February 21, 2021).
[18] *Id*.

- **Treatment Services:** Treatment services[19] include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support.[20]
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.[21]

Licensure of Substance Abuse Service Providers

The DCF regulates substance use disorder treatment by licensing individual treatment components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,[22] intervention,[23] and clinical treatment services.[24]

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.[25] "Clinical treatment services" include, but are not limited to, the following licensable service components:

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.
- Detoxification.
- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.
- Outpatient treatment.
- Residential treatment.[26]

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[19] *Id*. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.
[20] *Id*.
[21] *Id*.
[22] Section 397.311(26)(c), F.S. "Prevention" is defined as "a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles". *See also,* The DCF, *Substance Abuse: Prevention,* https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml (last visited February 21, 2021). Substance abuse prevention is achieved through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.
[23] Section 397.311(26)(b), F.S. "Intervention" is defined as "structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems."
[24] Section 397.311(26), F.S.
[25] Section 397.311(26)(a), F.S.
[26] *Id*.

Florida does not license recovery residences; instead, in 2015 the Legislature enacted sections 397.487–397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[27]

Application for Licensure

Individuals applying for licensure as substance abuse service providers must submit applications on specified forms provided, and in accordance with rules adopted, by the DCF.[28] Applications must include, at a minimum:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the department of the applicant service provider's financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.
- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances. Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license.
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.
- Proof of the ability to provide services in accordance with the DCF rules.
- Any other information that the DCF finds necessary to determine the applicant's ability to carry out its duties under this chapter and applicable rules.[29]

Adverse Action - Applicant or Licensee

Section 397.401, F.S., prohibits any person or agency from acting as a substance abuse service provider unless the person or agency is licensed or exempt from licensure. Based on a licensure inspection or resulting from a complaint, a provider may be cited for violations of licensure standards and a fine may be imposed.[30] Fines are levied based on the severity and prevalence of the violation and range in amounts per day, per violation, up to a maximum of $500.[31]

Section 397.415(1)(d), F.S., allows the DCF to deny, suspend, or revoke the license of a service provider or suspend or revoke the license as to the operation of any service component or

[27] Chapter 2015-100, L.O.F.
[28] Section 397.403(1), F.S.
[29] *Id*.
[30] Section 397.415(1)(a)1., F.S.
[31] Section 397.415(1)(a)2.-3., F.S.

location identified on the license for false representation of a material fact in the license application or omission of any material fact from the application.

Substance Abuse Treatment Employee Background Screening and Exemptions

Certain individuals affiliated with substance abuse treatment providers must undergo background screening prior to receiving a license. Section 397.4073, F.S., requires all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services and peer specialists who have direct contact with individuals receiving services to undergo a level 2 background screening.[32]

Individuals applying for licensure must provide, at a minimum, the following:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the DCF of the applicant service provider's financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.
- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances. Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license.
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.[33]

In lieu of requiring the applicant to submit the information, the DCF is required to accept proof of accreditation by an accrediting organization with requirements comparable to Florida licensure regulations, or through another nationally recognized certification process which the DCF finds acceptable, and which meets the minimum licensure requirements of ch. 397, F.S.[34]

Recovery Residences

Recovery residences (also known as "sober homes" or "sober living homes") are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.[35] These residences offer no formal treatment (though they

[32] Section 435.04, F.S., provides standards and necessary criteria for level 2 background screening.
[33] Section 397.403(1)(a)-(g), F.S.
[34] Section 397.403(2), F.S.
[35] The SAMSHA, *Recovery Housing: Best Practices and Suggested Guidelines*, p. 2, available at https://www.samhsa.gov/sites/default/files/housing-best-practices-100819.pdf (last visited February 22, 2021).

may mandate or strongly encourage attendance at 12-step groups) and are, in some cases, self-funded through resident fees.[36]

A recovery residence is defined as "a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment."[37]

Oxford House Model

Multiple studies have found that individuals in recovery benefit from residing in a recovery residence. For example, individuals in recovery residing in an Oxford House (OH), a specific type of recovery residence, had significantly lower rates of substance use, significantly higher income, and significantly lower incarceration rates than those individuals who participate in usual group care.[38]

OH is a non-profit organization that rents out single-family homes for individuals recovering from addiction.[39] The OH model is a recovery residence of six to fifteen residents that is democratically run, self-supporting, and drug-free.[40] Each OH recovery residence operates pursuant to a charter issued by the OH organization. Three or more OHs within a 100-mile radius make up one OH chapter. A representative from each house meets with the others on a monthly basis to exchange information, seek resolution of problems in a particular house, and express that chapter's vote on larger issues within the OH organization. The OH Board of Directors solely determines whether to grant or revoke an OH's charter and exercises authority over the policies and officers of the OH.[41] In 1988, Congress passed the Anti-Drug Abuse Act, which, among other provisions, recognized OH as a model for recovery residences and required states to

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[36] The Society for Community Research and Action, *Statement on Recovery Residences: The Role of Recovery Residences in Promoting Long-term Addiction Recovery*, available at https://www.scra27.org/what-we-do/policy/policy-position-statements/statement-recovery-residences-addiction/ (last visited February 22, 2021).

[37] Section 397.311(37), F.S.

[38] An Illinois study found that those in the OHs had lower substance use (31.3% vs. 64.8%), higher monthly income ($989.40 vs. $440.00), and diminished incarceration rates (3% vs. 9%). OH participants, by month 24, earned roughly $550 more per month than participants in the usual-care group. In a single year, the income difference for the entire OH sample corresponds to approximately $494,000 in additional production. In 2002, the state of Illinois spent an average of $23,812 per year to incarcerate each drug offender. The lower rate of incarceration among OH versus usual-care participants at 24 months (3% vs. 9%) corresponds to an annual saving of roughly $119,000 for Illinois. Together, the productivity and incarceration benefits yield an estimated $613,000 in savings per year, or an average of $8,173 per OH member. L. Jason, B. Olson, J., Ferrari, and A. Lo Sasso, *Communal Housing Settings Enhance Substance Abuse Recovery*, 96 Am. J. of Pub. Health 10, (2006), at 1727-1729, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1586125/ (last visited February 21, 2021).

[39] Oxford House, *Oxford House Residential Leases and the Landlord Relationship: The Legal and Policy Reasons Underlying Oxford House Group Leases*, available at https://oxfordhouse.org/userfiles/file/landlords.php#:~:text=Oxford%20House%2C%20Inc.%2C%20a,Montgomery%20County%2C%20Maryland%20in%201975 (last visited February 22, 2021).

[40] Oxford House, *The Purpose and Structure of Oxford House,* available at http://www.oxfordhouse.org/userfiles/file/purpose_and_structure.php (last visited February 22, 2021).

[41] *Id*.

establish a recurring loan fund to support groups wishing to establish recovery residences like OH.[42]

A cost-benefit analysis regarding residing in Oxford Houses found variation in cost and benefits compared to other residences. The result suggests that the additional costs associated with OH treatment, roughly $3,000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and substance use as well as increases in earning from employment.[43] Additionally, another study found that residents of a recovery residence were more likely to report abstaining from substance use at a higher rate, including 19 percent of residents sampled had been abstinent from drugs and alcohol for six months upon entering an OH; that proportion increased to 39 percent after six months of residency, and by 18 months 42 percent of the residents studied had achieved complete abstinence.[44]

Voluntary Certification of Recovery Residences in Florida

Florida utilizes voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[45] Under the voluntary certification program, the DCF has approved two credentialing entities to design the certification programs and issue certificates: the Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board certifies recovery residence administrators.[46]

Patient Referrals

While certification is voluntary, Florida law incentivizes certification. Since 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.[47] There are certain exceptions that allow referrals to or from uncertified recovery residences, including:

- A licensed service provider under contract with a behavioral health managing entity.

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[42] Oxford House, History and Accomplishments, available at http://www.oxfordhouse.org/userfiles/file/oxford_house_history.php (last visited February 22, 2021). *See also* The Anti-Drug Abuse Act, P.L. 100-690, s. 1916A (1988). This mandate was subsequently changed to a permissive provision in 1990 and codified in 42 U.S.C. § 300x-25.

[43] "While treatment costs were roughly $3,000 higher for the OH group, benefits differed substantially between groups. Relative to usual care, OH enrollees exhibited a mean net benefit of $29,022 per person. The result suggests that the additional costs associated with OH treatment, roughly $3000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and drug and alcohol use as well as increases in earning from employment… even under the most conservative assumption, we find a statistically significant and economically meaningful net benefit to OH of $17,800 per enrollee over two years." A. Lo Sasso, E. Byro, L. Jason, J. Ferrari, and B. Olson, *Benefits and Costs Associated with Mutual-Help Community-Based Recovery Homes: The Oxford House Model*, 35 Evaluation and Program Planning (1), (2012) at p. 7, available at http://europepmc.org/backend/ptpmcrender.fcgi?accid=PMC3596872&blobtype=pdf (last visited February 22, 2021).

[44] D. Polcin, R. Korcha, J. Bond, and G. Galloway, *Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcome*, 38 J. Substance Abuse Treatment 356-365 (2010) available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2860009/ (last visited February 22, 2021).

[45] Sections 397.487–397.4872, F.S.

[46] The DCF, *Recovery Residence Administrators and Recovery Residences*, available at https://www.myflfamilies.com/service-programs/samh/recovery-residence/ (last visited February 22, 2021).

[47] Section 397.4873(1), F.S.

- Referrals by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral.
- Referrals made before July 1, 2018, by a licensed service provider to that licensed service provider's wholly owned subsidiary.
- Referrals to, or accepted referrals from, a recovery residence with no direct or indirect financial or other referral relationship with the licensed service provider, and that is democratically operated by its residents pursuant to a charter from an entity recognized or sanctioned by Congress, and where the residence or any resident of the residence does not receive a benefit, directly or indirectly, for the referral.[48]

The DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.[49] As of February 15, 2021, there were 391 certified recovery residences in Florida.[50]

Background Screening

Background Screening Process

Current law establishes standard procedures for criminal history background screening of prospective employees and ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[51] and may include criminal records checks through local law enforcement agencies.[52] A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[53]

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[54] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.[55]

[48] Section 397.4873(2)(a)-(d), F.S.
[49] Section 397.4872(2), F.S.
[50] The Florida Association of Recovery Residences, *Certified Recovery Residences established by s. 397.487, F.S.*, available at https://www.myflfamilies.com/service-programs/samh/recovery-residence/docs/FARR%20Certified%20Recovery%20Residences.pdf (last visited February 23, 2021).
[51] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at https://www.nsopw.gov/ (last visited February 23, 2021).
[52] Section 435.03, F.S.
[53] Section 435.04, F.S.
[54] Section 435.05(1)(a), F.S.
[55] Section 435.04(1)(a), F.S.

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to the FDLE within five working days after receiving it.[56] Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.[57] For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.[58] For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.[59] The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.[60]

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 offenses enumerated in s. 435.04(2), F.S., or similar law of another jurisdiction.[61]

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the head of the appropriate agency (in the case of substance abuse treatment, the Secretary of the DCF) to exempt applicants from disqualification under certain circumstances.[62]

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,[63] career offender,[64] or sexual offender (unless not required to register)[65] cannot ever be exempted from disqualification.[66]

Additionally, individuals employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain felony offenses may be exempted from disqualification from employment, without waiting for three years.[67] These crimes include certain offenses related to:

- Prostitution;

[56] Section 435.05(1)(b)-(c), F.S.
[57] *Id*.
[58] Section 435.05(1)(b), F.S.
[59] Section 435.05(1)(c), F.S.
[60] Section 435.05(1)(d), F.S.
[61] *See* s. 435.04(2), F.S., for a full list.
[62] *See* s. 435.07(1), F.S.
[63] Pursuant to s. 775.261, F.S.
[64] Pursuant to s. 775.261, F.S.
[65] Pursuant to s. 943.0435, F.S.
[66] Section 435.07(4)(b), F.S.
[67] Section 435.07(2), F.S.

- Third degree burglary of a structure or conveyance;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking);
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia; and
- Any related criminal attempt, solicitation, or conspiracy.[68]

To seek exemption from disqualification, an employee of a substance use service provider must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification, and the DCF must grant or deny the application within 60 days of the receipt of a completed application.[69]

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[70] Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.[71] This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion. This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals. Evidence that may support an exemption includes, but is not limited to:

- Personal references.
- Letters from employers or other professionals.
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program.
- Evidence of further education or training.
- Evidence of community involvement.
- Evidence of special awards or recognition.
- Evidence of military service.
- Parenting or other caregiver experiences.[72]

After the DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review

[68] *Id*.
[69] Section 397.4073(1)(f), F.S.
[70] Section 435.07(3)(a), F.S.
[71] The DCF, *CF Operating Procedure 60-18, Personnel: Exemption from Disqualification*, at p. 1, (Aug. 1, 2010), available at https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf (last visited February 23, 2021) (hereinafter, "The DCF Operating Procedure").
[72] *Id*. at p. 3-4.

of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.[73] These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.[74]

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor, and after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted. The regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency; the criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.[75]

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the DCF Secretary to grant or deny the exemption.[76] After an exemption request decision is final, the background screener provides a written response to the applicant as to whether the request is granted or denied.[77]

If the DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.[78] However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer.[79] If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used in deciding to deny the exemption request.[80] It must also inform the denied applicant of the availability of an administrative review pursuant to ch. 120, F.S.[81]

Background Screening and Exemptions from Disqualification for Recovery Residences

Sections 397.487 and 397.4871, F.S., require level 2 background screening for all recovery residence owners, directors and chief financial officers, and for administrators seeking certification. The DCF may exempt an individual from the disqualifying offenses of a level 2 background screening if the individual meets certain criteria and the recovery residence attests

[73] *Id*. at p. 5.
[74] *Id*.
[75] *Id*.
[76] *Id*.
[77] *Id.* at 5.
[78] *Id*. at 6.
[79] *Id*.
[80] *Id*.
[81] All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived. *See* The DCF Operating Procedure at p. 6.

that it is in the best interest of the program.[82] Since 2016, the DCF has granted 16 exemptions and denied four exemption requests, one of which was granted after an administrative appeal.[83] Additionally, the background screening requirements of these sections are duplicative of the requirements in ch. 435, F.S.

Florida Building Code

The Florida Building Code (the Building Code) establishes a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities and to the enforcement of these requirements and allows effective and reasonable protection of public safety, health, and general welfare at the most reasonable cost to the consumer.[84] The Legislature has vested in local governments the authority to inspect and enforce the provisions of the Building Code to protect public health and safety.[85] Each local government and each legally constituted enforcement district[86] with statutory authority is required to regulate building construction, and each state agency must enforce the Building Code on all public or private buildings, structures, and facilities, unless such responsibility is statutorily delegated to another unit of government.[87]

Florida Fire Prevention Code

Section 633.202, F.S., authorizes the State Fire Marshall to adopt by rule the Florida Fire Prevention Code (the Fire Code) which must contain all fire safety laws and rules that govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of fire safety laws and rules.[88] The State Fire Marshal must adopt both the current edition of the National Fire Protection Association's Standard 1, Fire Prevention Code and the current edition of the Life Safety Code, NFPA 101, by reference and may modify the selected codes and standards as needed to accommodate the specific needs of the state.[89] Section 633.208, F.S., establishes minimum fire safety standards for residential buildings.

Section 633.208(8)(a), F.S., provides that the provisions of the Life Safety Code, as contained in the Fire Code, do not apply to one-family and two-family dwellings. While local governments may adopt fire sprinkler requirements for one-family and two-family dwellings, the Legislature intends that economic consequences of the fire sprinkler mandate on homeowners be studied before the enactment of such a requirement.[90] Any local government that desires to adopt a fire

[82] Section 397.4872, F.S.
[83] E-mail correspondence with John Paul Fiore, Legislative Specialist, Department of Children and Families, dated March 1, 2021 (on file with the Senate Children, Families, and Elder Affairs committee).
[84] Section 553.72(1), F.S.
[85] Section 553.72(2), F.S.
[86] Section 553.80(2)(a), F.S., provides that any two or more counties or municipalities, or any combination thereof, may, in accordance with the provisions of ch. 163, F.S., governing interlocal agreements, form an enforcement district for the purpose of enforcing and administering the provisions of the Building Code. Each district so formed shall be registered on forms to be provided for that purpose.
[87] Section 553.80(1), F.S.
[88] Section 633.202(1), F.S.
[89] Section 633.202(2), F.S.
[90] Section 633.208(8)(a), F.S.

sprinkler requirement on one-family or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one-family or two-family dwellings or any proposed residential subdivision.[91] The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property.[92]

III. Effect of Proposed Changes:

The bill amends s. 397.403, F.S., relating to substance abuse service provider license applications, criminalizing the withholding or misrepresentation of pertinent information from an application to the DCF for licensure as a substance abuse service provider. Specifically, the bill provides that any applicant who willingly and knowingly makes a false representation of, or omits, any material fact from an application for licensure commits a third degree felony.[93]

The bill amends s. 397.415, F.S., relating to denial, suspension, and revocation of, and other remedial actions against, substance abuse provider licenses, requiring the DCF to immediately suspend the license of a substance abuse service provider in instances where the DCF issues a final order directing the provider to pay an administrative fine by a specified date and the provider fails to remit payment, plus any applicable interest, within 60 days of that date.

The bill amends ss. 397.487 and 397.4871, F.S., relating to the voluntary certification of recovery residences and recovery residence administrators, creating an alternative path to certification for recovery residences and their administrators which would otherwise be ineligible due to an owner, director, or chief financial officer of the residence, or a recovery residence administrator, being disqualified upon a level 2 background screening. Under the bill, if the DCF determines that an owner, director, or chief financial officer of a recovery residence, or a recovery residence administrator, has met the requirements for an exemption from disqualification applicable to service provider personnel under s. 435.07, F.S., or s. 397.4073, F.S., as described above, the residence or administrator will not automatically be deemed ineligible for certification.

The bill amends s. 397.4873, F.S., relating to referrals between providers and recovery residences. Under the bill, in instances where a provider violates the patient referral prohibition and the DCF issues a final order imposing an administrative fine as a result, the provider must pay the fine plus interest at the rate established in s. 55.03, F.S.[94] for each day beyond the date specified by the final order. If the provider fails to remit payment, plus any applicable interest, within 60 days of the date established by the final order, the DCF must immediately suspend the provider's license.

The bill amends s. 553.80, F.S., relating to enforcement of the Florida Building Code, providing that any single-family or two-family dwelling that is converted into a certified recovery residence, or that is a recovery residence and has a charter recognized by Congress, does not

[91] *Id*.
[92] *Id*.
[93] A third degree felony is punishable by a term of imprisonment not exceeding 5 years and a fine not to exceed $5,000. Sections 775.082 and 775.083, F.S
[94] Section 55.03, F.S., provides guidelines to be used by the Chief Financial Officer in setting rates of interest payable on judgments or decrees for each calendar quarter.

have a change of occupancy for purposes of enforcing the Florida Building Code solely on the basis of its conversion to use as a recovery residence. This exception would apply to recovery residences such as the Oxford House.

The bill amends s. 633.208, F.S., relating to minimum fire safety standards, providing that a single- or two-family dwelling that is a certified recovery residence may not be reclassified for the purposes of enforcing the Florida Fire Prevention Code solely due to such use. This exception would apply to recovery residences such as the Oxford House.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DCF anticipates that there may be an indeterminate negative fiscal impact to licensed substance abuse service providers contracting with managing entities, as these providers

will be subject to administrative fines of up to $1,000 per occurrence for violations of the patient referral provisions of s. 397.4873, F.S.[95]

C. Government Sector Impact:

The DCF anticipates that there may be an indeterminate positive impact on state government through collection of administrative fines levied upon licensed substance abuse service providers contracting with managing entities. A small, indeterminate expenditure may be required in order to modify the DCF's web-based licensing system to account for changes made by the bill. The DCF also predicts that there will be an indeterminate cost associated with administrative appeals hearings if local service providers appeal license suspensions.[96]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.403, 397.415, 397.487, 397.4871, 397.4873, 553.80, and 633.208.

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 Community Affairs on March 24, 2021:
The Committee Substitute:

- Removes "intentionally" from the bill's provision punishing the willful, knowing, and intentional misrepresentation or omission of material fact from an application for licensure as a substance abuse service provider;
- Removes the provision that would allow a behavioral health managing entity's licensed service provider to make or accept a referral from a recovery residence that is not certified by a credentialing organization and managed by a certified recovery residence administrator;
- Makes a technical change to the provision pertaining to the conversion of a single-family or two-family dwelling into a certified recovery residence, as it relates to the Florida Building Code.
- Amends the provision relating to the installation of fire sprinklers in single- or two-family dwellings certified as recovery residences.

[95] The DCF, *Agency Analysis of SB 804*, at p. 7 (January 25, 2021) (on file with the Senate Children, Families, and Elder Affairs Committee).
[96] *Id*.

CS by Children, Families, and Elder Affairs on March 2, 2021:
The Committee Substitute:

- Eliminates the provision of the bill permitting a credentialing agency to determine if specified employees of an applicant recovery residence or applicant recovery residence administrator meet the criteria for exemption from employment disqualification for certain prior criminal offenses.
- Broadens the eligibility for exemption from employment disqualification pursuant to s. 435.07 and 397.4073, F.S., to include owners, directors, and chief financial officers of an applicant recovery residence and applicant recovery residence administrators.

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 Community Affairs; and Children, Families, and Elder Affairs; and Senator Harrell

578-03316-21 2021804c2

A bill to be entitled

An act relating to substance abuse services; amending s. 397.403, F.S.; providing criminal penalties for making certain false representations or omissions of material facts when applying for service provider licenses; amending s. 397.415, F.S.; requiring the Department of Children and Families to suspend a service provider's license under certain circumstances; amending ss. 397.487 and 397.4871, F.S.; expanding the applicability of certain exemptions for disqualification to applications for certification of a recovery residence or a recovery residence administrator, respectively; amending s. 397.4873, F.S.; revising civil penalties; requiring the department to suspend a service provider's license under certain circumstances; amending s. 553.80, F.S.; specifying that certain dwellings converted to recovery residences do not have a change of occupancy under the Florida Building Code due to such conversion; amending s. 633.208, F.S.; prohibiting the reclassification of certain dwellings certified as recovery residences for purposes of enforcing the Florida Fire Prevention Code; providing an effective date.

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

Section 1. Subsection (5) is added to section 397.403, Florida Statutes, to read:

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

578-03316-21 2021804c2

397.403 License application.—

(5) An applicant who willfully and knowingly makes a false representation of material fact in a license application or who willfully and knowingly omits any material fact from a license application commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Paragraph (a) of subsection (1) of section 397.415, Florida Statutes, is amended to read:

397.415 Denial, suspension, and revocation; other remedies.—

(1) If the department determines that an applicant or licensed service provider or licensed service component thereof is not in compliance with all statutory and regulatory requirements, the department may deny, suspend, revoke, or impose reasonable restrictions or penalties on the license or any portion of the license. In such case:

(a) The department may:

1. Impose an administrative fine for a violation that is designated as a class I, class II, class III, or class IV violation pursuant to s. 397.411.

2. Impose an administrative fine for a violation that is not designated as a class I, class II, class III, or class IV violation pursuant to s. 397.411. Unless otherwise specified by law, the amount of the fine may not exceed $500 for each violation. Unclassified violations may include:

a. Violating any term or condition of a license.

b. Violating any provision of this chapter or applicable rules.

c. Providing services beyond the scope of the license.

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

d. Violating a moratorium imposed pursuant to this section.

3. Establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this chapter and applicable rules, unless the amount or aggregate limitation of the fine is prescribed by statute. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the department and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond the date set by the department for payment of the fine. If a violator does not pay the fine plus any applicable interest within 60 days after the date set by the department, the department shall immediately suspend the violator's license.

Section 3. Subsection (6) of section 397.487, Florida Statutes, is amended to read:

397.487 Voluntary certification of recovery residences.—

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under s. 408.809 and chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809(4) or s. 435.04(2) unless the department has issued an exemption under s. 435.07. Exemptions from disqualification applicable to service provider personnel pursuant to s. 397.4073 or s. 435.07 shall apply to this subsection. In accordance with s. 435.04, the department shall

notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

Section 4. Subsection (5) of section 397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—

(5) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809 or s. 435.04(2) unless the department has issued an exemption under s. 435.07. Exemptions from disqualification applicable to service provider personnel pursuant to s. 397.4073 or s. 435.07 shall apply to this subsection. In accordance with s. 435.04, the department shall notify the credentialing agency of the applicant's eligibility based on the results of his or her background screening.

Section 5. Subsection (6) of section 397.4873, Florida Statutes, is amended to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(6) ~~After June 30, 2019,~~ A licensed service provider that violates ~~violating~~ this section is ~~shall be~~ subject to an administrative fine of $1,000 per occurrence. If such fine is imposed by final order of the department and is not subject to further appeal, the service provider shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond

the date set by the department for payment of the fine. If the service provider does not pay the fine plus any applicable interest within 60 days after the date set by the department, the department shall immediately suspend the service provider's license. Repeat violations of this section may subject a provider to license suspension or revocation pursuant to s. 397.415.

Section 6. Subsection (9) is added to section 553.80, Florida Statutes, to read:

553.80 Enforcement.—

(9) A single-family or two-family dwelling that is converted into a certified recovery residence, as defined in s. 397.311, or a recovery residence, as defined in s. 397.311, that has a charter from an entity recognized or sanctioned by Congress does not have a change of occupancy as defined in the Florida Building Code solely due to such conversion.

Section 7. Subsection (11) is added to section 633.208, Florida Statutes, to read:

633.208 Minimum firesafety standards.—

(11) Notwithstanding subsection (8), a single-family or two-family dwelling that is a certified recovery residence, as defined in s. 397.311, or that is a recovery residence, as defined in s. 397.311, that has a charter from an entity recognized or sanctioned by Congress may not be reclassified for purposes of enforcing the Florida Fire Prevention Code solely due to such use.

Section 8. 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 24, 2021

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

Dear Chair Passidomo,

I respectfully request that **SB 804 – Substance Abuse Services** be placed on the next available Agenda for Rules.

Regarding the need for SB 804 – Substance Abuse Services:

- These certified recovery residences are the good actors in the recovery industry. Over the past 2 years, I have passed legislation related to the recovery industry which has cleaned up or weeded out many of the bad actors. Today this Bill continues the objective to best serve those fighting addiction.
- The Bill prohibits a reclassification of occupancy type under the building codes for single family and two family dwellings that convert to certified recovery residences or Oxford Houses and prohibits any code requirement of these residences from requiring the installation of fire sprinklers due to such use. Which has been an issue for County Fire Inspectors.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 16, 2021
Meeting Date

SB 804
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic Substance Abuse Services

Name Tonnette Graham

Job Title Associate Director of Public Policy

Address 100 S. Monroe Street
Street

Phone 850.509.5333

Tallahassee FL 32301
City *State* *Zip*

Email tgraham@fl-counties.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Counties

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 826
INTRODUCER:	Senators Baxley and Harrell
SUBJECT:	Child Protection Teams
DATE:	April 15, 2021
REVISED:	

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

I. Summary:

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

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

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

This bill is effective July 1, 2021.

II. Present Situation:

Waiver of Sovereign Immunity

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

[1] Legal Information Institute, *Sovereign immunity*, *available at* https://www.law.cornell.edu/wex/sovereign_immunity (last visited March 8, 2021).
[2] Section 768.28(1), F.S.

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

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

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

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

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

Damages

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

Claim Bills

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

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

Child Protection Teams

Description

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

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

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

Composition and Responsibilities

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

Services

When a CPT accepts a referral from the DCF or law enforcement agency, the team must be able to provide, in part, the following services:

- Medical diagnosis and evaluation services;
- Nursing assessments;
- Child and family social assessments;
- Multidisciplinary case staffings;
- Psychological and psychiatric diagnosis and evaluations;
- Specialized and forensic interviews; and
- Expert medical, psychological, and related professional testimony in court cases.[32]

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

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

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

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

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

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

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

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

Cases that must be referred to a Child Protection Team

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

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

Employees and Sovereign Immunity

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

Lawsuits Filed Against Child Protection Teams

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

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

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

Sovereign Immunity and Child Protection Team Physicians

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

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

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

III. Effect of Proposed Changes:

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

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

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

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

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

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28, Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[46] The DOH Analysis at p. 4.

By Senator Baxley

12-00719-21 2021826__

A bill to be entitled

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

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

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

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

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

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

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

1. "Employee" includes any volunteer firefighter.

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

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:
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 30, 2021

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

Dear Chair Passidomo,

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

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

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

Thank you for your favorable consideration.

Onward & Upward,

Dennis K Baxley

Senator Dennis K. 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

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 848
INTRODUCER:	Senator Powell
SUBJECT:	Electronic Legal Documents
DATE:	April 15, 2021
REVISED:	

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

I. Summary:

SB 848 amends the existing process for an online notary who witnesses an electronic record to require the online notary to verify both the witness' *and principal's* identities. Under current law, the notary is not required to verify the principal's identity when the notary supervises the witnessing of an electronic record.

The bill requires an online notary to ask the principal certain questions when only one witness is in the physical presence of the principal if an electronic record to be signed is a will, revocable trust, health care advanced directive, agreement regarding succession or a waiver of spousal rights, or power of attorney. These questions are intended to prevent fraudulent or otherwise invalid transactions. For example, these questions might elicit information that would allow the notary to verify that the principal is capable of understanding the record or document in question and capable of giving proper legal consent. Under current law, these questions are necessary and apply in the above scenarios when an online notary witnesses an electronic record, regardless of how many witnesses are in the presence of the principal.

The bill also updates statutory forms used by notaries public and online notaries to reflect how, by physical presence or by audio video technology, the principal and each witnesses appeared before the notary.

The bill takes effect upon becoming law.

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-video communication technology, similar to skype and

zoom.[1] This audio-video technology enables real time, two-way communication where the parties (online notary, principal, and any witnesses) can see, hear, and communicate with each other electronically.

An online notary may perform most of the traditional notary public's duties, including the administration of oaths and affirmations, taking of acknowledgements; attestation to photocopies of certain documents, verification of vehicle identification numbers; and the certification of the contents of a safe-deposit box.[2] Additionally, s. 117.285, F.S., allows online notaries to supervise the witnessing of electronic records.[3] Generally, a notary public is not required to witness a document when all parties are physically present together.

The Department of State governs the registration of online notaries public (online notaries), and as a prerequisite, requires registrants to:[4]

- Be commissioned or appointed as a notary public pursuant to ch. 117, F.S., a civil-law notary under ch. 118, F.S., or a commissioner of deeds under part IV of ch. 721, F.S.;
- Complete training that covers the duties, obligations, and technology requirements for serving as an online notary;
- Pay a $10 notary public registration fee;
- Have a current contract with a remote online notarization 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.

Online Notarizations

To perform an online notarization, an online notary must first determine whether the principal[5] 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.[6] 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;[7]

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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] Florida Governor's Office, *Duties of a Notary Public*, 13 (December 17, 2019), *available at* https://www.flgov.com/wp-content/uploads/Governor's%20Notary_Reference_Manual_12.17.19%20edited1.pdf (last visited Mar. 1, 2021).

[3] This duty was newly created by ch. 2019-71, Laws of Fla. (*see supra* note 1).

[4] 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. 1, 2021).

[5] Section 117.201(12), F.S., defines a principal as "an individual whose signature is acknowledged, witnessed, or attested to in an online notarization, or who takes an oath or affirmation administered by an online notary public."

[6] Section 117.265(4), F.S.

[7] Section 117.05(5)(b)2., F.S., 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 or identification 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 identification card issued by if the principal is still in the Florida Department of Correction's or U.S. Department of Justice's custody; an identification 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

- The notary's credential analysis[8] of the identification to ensure its validity; and
- The notary's identity proofing[9] 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. If the online notary can confirm the pertinent identities, then the online notary may witness the principal electronically sign the document. The online notary will then add his or her unique electronic signature and digital notary seal using tamper-evident technology that would document any subsequent change to the document.[10]

For all online notarizations, an online notary must:

- Make and maintain a recording of the audio-video component (video) of the notarization, including the credential analysis and identity proofing he or she performed, if any;[11] 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.[12]

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.[13]

Remote Witnessing of Documents

An online notary may also supervise the witnessing of electronic records via the same audio-video platform used for online notarization.[14] If the witness is physically present with the principal, he or she can generally confirm his or her identity by stating his or her name and current address on the recording. If the witness is connected via audio-video 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 in an online notarization.[15]

confinement—a sworn, written statement from a law enforcement officer that states that the inmate is the person whose signature is to be notarized.

[8] Section 117.201(3), F.S. *See also*, s. 117.295(3)(b), F.S.
[9] Section 117.201(7), F.S. *See also*, s. 117.295(3)(a), F.S.
[10] Section 117.255, F.S.
[11] Section 117.245(2), F.S.
[12] Section 117.245(1), F.S.
[13] Section 117.245(4), F.S.
[14] Section 117.285, F.S.
[15] *See supra* "Online Notarizations."

In certain circumstances,[16] an online notary and his or her remote online notarization service provider must provide a higher level of scrutiny to supervise the witnessing of a document. For example:

- Where the online notary has reason to believe that the principal is impaired or unable to care for him or herself, the notary must ensure that the witness is physically-present with the principal at the time of witnessing.[17]
- The remote online notarization service provider must give the principal a notice that, if he or she is a vulnerable adult,[18] the witnessing of a document via audio-video technology is not valid.[19]
- The online notary must engage in a specific colloquy with the principal to ensure that the principal is mentally capable of understanding the nature and effect of the document at the time of witnessing.[20]

The above processes do not guarantee the ultimate effectiveness of the witnessing procedure.[21]

Retroactive Application of a Statute

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.[22] When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that "[t]he distinction between substantive and procedural law is neither simple nor certain."[23] The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.[24]

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[16] An online notary must perform additional inquiries where the document to be witnessed is a will, trust and testamentary aspect, healthcare advanced directive, waiver of spousal rights, or power of attorney concurrent with a will. Section 117.285(5), F.S.
[17] Section 117.285(5)(a)-(b), F.S.
[18] Section 415.102, F.S., defines a "vulnerable adult" as a person who is 18 years or older, whose ability to perform the normal activities of daily living or to provider for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.
[19] Section 117.285(5)(c), F.S.
[20] Section 117.285(5)(d)-(e), F.S.
[21] For example, s. 117.285(5)(f), F.S., states that "[a] principal's responses to the question in paragraphs (a) and (d) may be offered as evidence regarding the validity of the instrument, but an incorrect answer may not serve as the sole basis to invalidate an instrument."
[22] *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).
[23] *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle's Design-Build, Inc*., 753 So. 2d 49, 53 (Fla. 2000).
[24] *Love* at 184.

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.[25] Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.[26]

III. Effect of Proposed Changes:

General Requirements

Section 1 amends s. 117.201(9), F.S., to clarify that an "online notarization" is the online notary's performance of a notarial act during which a principal *or any witness* appears electronically.

Section 2 amends s. 117.285, F.S., to specify that the supervision of the witnessing of an electronic record by an online notary pursuant to ch. 117, F.S., is a "notarial act."[27]

Procedural Requirements

Section 2 also creates an explicit requirement that an online notary comply with the online notarization procedures of part II of ch. 117, F.S., including, e.g., the retention of records and recording of the notarial act.[28]

Section 117.265(4), F.S., currently requires online notaries who perform an online notarization to verify the principal's identity according to specific procedures. **Section 2** of the bill additionally amends s. 117.285(2), F.S., regarding the witnessing of a document where the witness appears remotely from the principal, to conform to the procedures outlined in s. 117.265(4), F.S. Therefore, the bill requires an online notary of such a witnessing to verify both the witness' *and principal's* identities by either 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 individual's remote presentation of a government-issued identification;[29]
- The notary's credential analysis[30] of the identification to ensure its validity; and
- The notary's identity proofing[31] of the individual, wherein a third party provides knowledge-based authentication questions that must be correctly answered by the individual in a limited amount of time.

Section 117.285(2), F.S., does not require an online notary to confirm a principal's identity if the witness is physically present with the principal at the time the document is witnessed; however,

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[25] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.,* 869 So. 2d 1210 (Fla. 2004).
[26] *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).
[27] "Notarial act" is an undefined term, but is used commonly in ch. 117, F.S., to denote those acts that a notary public or online notary may perform. *See, e.g.*, ss. 117.021(7), 117.201(5), 117.245, and 117.265(3), F.S., which all use the term "notarial act" to refer to an act performed by a notary in the course of his or her duty as a notary.
[28] *See*, s. 117.245, F.S.
[29] *See supra* note 8.
[30] Section 117.201(3), F.S. *See also*, s. 117.295(3)(b), F.S.
[31] Section 117.201(7), F.S. *See also*, s. 117.295(3)(a), F.S.

the online notary must verify the witness' identity by the witness' statement of his or her name and address on the record.[32]

Section 2 further amends s. 117.285(5), F.S., to clarify that a heightened scrutiny and additional duties apply when "fewer than two witnesses are in the physical presence of the principal." This section of the bill then restates in newly created s. 117.285(5)(k), F.S., that the requirements of s. 117.285(5), F.S., do not apply if two or more witnesses appear in the physical presence of the principal at the time of the notarial act.

Conforming Changes to Statutory Forms

In 2019, as part of the overall creation of online notarization by ch. 2019-71, Laws of Florida, the Legislature updated s. 117.05(4)(c), F.S., to require Florida notaries to indicate in a jurat or notarial certificate (included as part of their notarization) whether the person appeared in-person, or by audio-video communication to sign the notarized document.

Sections 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3., 732.703(5)(b)4., and 747.051(1), F.S.,[33] contain statutory forms that must be notarized or witnessed to have effect. The current version of these forms include only a statement that the act was "sworn to…before me by…" and therefore are incompatible with online notarization as authorized effective January 1, 2020. **Sections 3, 4, 5, 7, and 8** of the bill update these forms to allow the notary to indicate whether the subject of the notarization was physically present, or *appeared by online notarization*.

Section 723.503(1), F.S., includes a statutory form for a self-proving will. **Section 5** of the bill amends this statutory form to allow the notary to fill in both the state and county in which it was acknowledged or subscribed before the notary, for cases in which a document is prepared in Florida—but actually notarized in a different state.

Technical Corrections

Sections 2 and 6 amends ss. 117.285(6)(b) and 732.521(7), F.S., respectively, to correct erroneous cross-references.

Current law inaccurately describes the subject of both ss. 732.701 and 732.702, F.S., as "a waiver of spousal rights." However, s. 732.701, F.S., addresses wills and devises, and s. 732.702, F.S., more specifically addresses waivers of spousal rights. **Section 2** amends s. 117.285(5), F.S., to clarify the subjects of these cross-references as "an agreement concerning succession *or* a waiver of spousal rights."

Section 2 of the bill also corrects a reference in s. 117.285(5), F.S., to a *revocable* trust with testamentary aspects *as described in s. 736.0403(2)(b), F.S.* Only revocable trusts can have

[32] Section 117.285(2), F.S.

[33] Sections 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3., F.S., 732.703(5)(b)4., and 747.051(1), F.S., respectively, contain statutory forms to complete a power of attorney, an election of a surviving spouse regarding the descent of homestead, a self-proving will or codicil, divorce and beneficiary designations, and sale of transfer of an absentee's property.

testamentary aspects, and therefore require the witnessing requirements described in s. 117.285(5), F.S. In a correlative change, the bill adds s. 117.285(h)2., F.S., to clarify that the witnessing requirements in s. 117.285(5), F.S., do not affect the nontestamentary aspects of a revocable trust under ch. 736, F.S.

Retroactivity and Effective Date

Section 9 states that the amendments made are remedial in nature and will apply retroactively to January 1, 2020—the date upon which ch. 2019-71, Laws of Florida, creating part II of ch. 117, F.S., took effect.

Section 10 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Online notaries and their associated remote online notarization platforms may be required to update some of their practices as a result of the changes made in SB 848. Additionally, those who practice estate law in Florida will need to familiarize themselves with the witnessing requirements established in the bill, as the number of documents witnessed by an online notary will likely increase.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.201, 117.285, 709.2119, 732.401, 732.503, 732.521, 732.703, and 747.051, F.S.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Powell

30-00743B-21 2021848__

A bill to be entitled

An act relating to electronic legal documents; amending s. 117.201, F.S.; revising the definition of the term "online notarization"; amending s. 117.285, F.S.; clarifying that supervising the witnessing of an electronic record by an online notary public is a notarial act; specifying applicability of online notarization procedures to supervision of the witnessing of an electronic record; modifying witnessing procedures; revising applicability; amending s. 709.2119, F.S.; revising the statutory form for an affidavit for acceptance of and reliance upon a power of attorney to reflect means of notarization; amending s. 732.401, F.S.; revising the statutory form for the notice of election relating to the descent of homestead property to reflect means of notarization; amending s. 732.503, F.S.; revising the statutory form for the self-proof of a will or codicil to reflect means of notarization; amending s. 732.521, F.S.; conforming a cross-reference; amending s. 732.703, F.S.; revising statutory forms relating to the disposition of certain assets at death to reflect means of notarization; amending s. 747.051, F.S.; revising the form for a petition of summary relief for the sale or transfer of certain property owned by an absentee to reflect means of notarization; providing for construction and retroactive application; providing an effective date.

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30-00743B-21 2021848__

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

Section 1. Subsection (9) of section 117.201, Florida Statutes, is amended to read:

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

(9) "Online notarization" means the performance of a notarial act using electronic means in which the principal or any witness appears before the notary public by means of audio-video communication technology.

Section 2. Section 117.285, Florida Statutes, is amended to read:

117.285 Supervising the witnessing of electronic records.—Supervising the witnessing of an electronic record by an online notary public in accordance with this section is a notarial act. An online notary public may supervise the witnessing of electronic records by complying with the online notarization procedures of this part and using the same audio-video communication technology used for online notarization by a principal, as follows:

(1) The witness may be in the physical presence of the principal or remote from the principal provided the witness and principal are using audio-video communication technology.

(2) If the witness is remote from the principal and viewing and communicating with the principal by means of audio-video communication technology, the principal's and witness's identities ~~identity~~ must be verified in accordance with the procedures for identifying a principal as set forth in s. 117.265(4). If the witness is in the physical presence of the principal, the witness must confirm his or her identity by

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stating his or her name and current address on the audio-video recording as part of the act of witnessing.

(3) The act of witnessing an electronic signature means the witness is either in the physical presence of the principal or present through audio-video communication technology at the time the principal affixes the electronic signature and the witness hears the principal make a statement to the effect that the principal has signed the electronic record.

(4) A witness remote from the principal and appearing through audio-video communication technology must verbally confirm that he or she is a resident of and physically located within the United States or a territory of the United States at the time of witnessing.

(5) Notwithstanding subsections (2) and (3), if an electronic record to be signed is a will under chapter 732, a revocable trust with testamentary aspects as described in s. 736.0403(2)(b) ~~under chapter 736~~, a health care advance directive, an agreement concerning succession or a waiver of spousal rights under s. 732.701 or s. 732.702, respectively, or a power of attorney authorizing any of the transactions enumerated in s. 709.2208, all of the following apply when fewer than two witnesses are in the physical presence of the principal ~~shall apply~~:

(a) Prior to facilitating witnessing of an instrument by means of audio-video communication technology, a RON service provider shall require the principal to answer the following questions in substantially the following form:

1. Are you under the influence of any drug or alcohol today that impairs your ability to make decisions?

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2. Do you have any physical or mental condition or long-term disability that impairs your ability to perform the normal activities of daily living?

3. Do you require assistance with daily care?

(b) If any question required under paragraph (a) is answered in the affirmative, the principal's signature on the instrument may only be validly witnessed by witnesses in the physical presence of the principal at the time of signing.

(c) Subsequent to submission of the answers required under paragraph (a), the RON service provider shall give the principal written notice in substantially the following form:

NOTICE: If you are a vulnerable adult as defined in s. 415.102, Florida Statutes, the documents you are about to sign are not valid if witnessed by means of audio-video communication technology. If you suspect you may be a vulnerable adult, you should have witnesses physically present with you before signing.

(d) The act of witnessing an electronic signature through the witness's presence by audio-video communication technology is valid only if, during the audio-video communication, the principal provides verbal answers to all of the following questions, each of which must be asked by the online notary public in substantially the following form:

1. Are you currently married? If so, name your spouse.

2. Please state the names of anyone who assisted you in accessing this video conference today.

3. Please state the names of anyone who assisted you in

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preparing the documents you are signing today.

4. Where are you currently located?

5. Who is in the room with you?

(e) An online notary public shall consider the responses to the questions specified in paragraph (d) in carrying out of the duties of a notary public as set forth in s. 117.107(5).

(f) A principal's responses to the questions in paragraphs (a) and (d) may be offered as evidence regarding the validity of the instrument, but an incorrect answer may not serve as the sole basis to invalidate an instrument.

(g) The presence of a witness with the principal at the time of signing by means of audio-video communication technology is not effective for witnessing the signature of a principal who is a vulnerable adult as defined in s. 415.102. The contestant of an electronic record has the burden of proving that the principal was a vulnerable adult at the time of executing the electronic record.

(h) Nothing in this subsection shall:

1. Preclude a power of attorney, which includes banking or investment powers enumerated in s. 709.2208, from being effective with respect to any other authority granted therein or with respect to the agent's authority in connection with a real property, commercial, or consumer transaction or loan, to exercise any power specified therein or to execute and deliver instruments obligating the principal or to draw upon the proceeds of such transaction or loan; or

2. Affect the nontestamentary aspects of a revocable trust under chapter 736.

(i) The electronic record containing an instrument signed

by witnesses who were present with the principal by means of audio-video communication technology shall contain a perceptible indication of their presence by such means.

(j) ~~Nothing in~~ This subsection does not ~~shall~~ affect the application of s. 709.2119.

(k) The requirements of this subsection do not apply if there are at least two witnesses in the physical presence of the principal at the time of the notarial act.

(6) Pursuant to subpoena, court order, an authorized law enforcement inquiry, or other lawful request, a RON service provider or online notary public shall provide:

(a) The last known address of each witness who witnessed the signing of an electronic record using audio-video communication technology under this section.

(b) A principal's responses to the questions in paragraph (5)(a) or paragraph (5)(d) ~~(5)(b)~~, as applicable.

(c) An uninterrupted and unedited copy of the recording of the audio-video communication in which an online notarization is performed.

(7) Except as set forth in s. 709.2202, an act of witnessing performed pursuant to this section satisfies any requirement that the witness must be a subscribing or attesting witness or must be in the presence of the principal at the time of signing.

(8) The law of this state governs the validity of witnessing supervised by an online notary public pursuant to this section, regardless of the physical location of the witness at the time of witnessing. State and federal courts in this state have subject matter jurisdiction over any dispute arising

out of an act of witnessing pursuant to this section, and may issue subpoenas for records or to require the appearance of witnesses in relation thereto in accordance with applicable law.

Section 3. Paragraph (c) of subsection (2) of section 709.2119, Florida Statutes, is amended to read:

709.2119 Acceptance of and reliance upon power of attorney.—

(2) A third person may require:

(c) A written affidavit executed by the agent under this subsection which may, but need not, be in the following form:

STATE OF.....
COUNTY OF.....

Before me, the undersigned authority, personally appeared ...(agent)... ("Affiant") by the means specified herein, who swore or affirmed that:

1. Affiant is the agent named in the Power of Attorney executed by ...(principal)... ("Principal") on ...(date)....

2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled in ...(insert name of state, territory, or foreign country)....

3. To the best of Affiant's knowledge after diligent search and inquiry:

a. The Principal is not deceased;

b. Affiant's authority has not been suspended by initiation of proceedings to determine incapacity or to appoint a guardian or a guardian advocate;

c. Affiant's authority has not been terminated by the

filing of an action for dissolution or annulment of Affiant's marriage to the principal, or their legal separation; and

d. There has been no revocation, or partial or complete termination, of the power of attorney or of Affiant's authority.

4. Affiant is acting within the scope of authority granted in the power of attorney.

5. Affiant is the successor to ...(insert name of predecessor agent)..., who has resigned, died, become incapacitated, is no longer qualified to serve, has declined to serve as agent, or is otherwise unable to act, if applicable.

6. Affiant agrees not to exercise any powers granted by the Power of Attorney if Affiant attains knowledge that the power of attorney has been revoked, has been partially or completely terminated or suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.

.....
...(Affiant)...

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization this .... day of ...(month)..., ...(year)..., by ...(name of person making statement)...

...(Signature of Notary Public~~—State of Florida~~)...

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

Personally Known OR Produced Identification

...(Type of Identification Produced)...

Section 4. Paragraph (e) of subsection (2) of section 732.401, Florida Statutes, is amended to read:

732.401 Descent of homestead.—

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

(e) The election must ~~shall~~ be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE
TO TAKE A ONE-HALF INTEREST OF
DECEDENT'S INTEREST IN
HOMESTEAD PROPERTY

STATE OF.....
COUNTY OF.....

1. The decedent, ..., died on ..... On the date of the decedent's death, the decedent was married to ....., who survived the decedent.

2. At the time of the decedent's death, the decedent owned

an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, which real property being in ..... County, Florida, and described as: ...(description of homestead property)....

3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property, and an order has been rendered by a court having jurisdiction of the real property authorizing the undersigned to make this election.

.....
...(Affiant)...

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization this .... day of ...(month)..., ...(year)..., by ...(affiant)...

...(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 5. Subsection (1) of section 732.503, Florida

Statutes, is amended to read:

732.503 Self-proof of will.—

(1) A will or codicil executed in conformity with s. 732.502 may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

STATE OF..... ~~FLORIDA~~

COUNTY OF ....

I,....., declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

.....

Testator

We,.....and....., have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument to be the testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

.....

Witness

.....

Witness

Acknowledged and subscribed before me by means of ☐ physical presence or ☐ online notarization by the testator, (type or print testator's name), who ☐ is personally known to me or ☐ ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and sworn to and subscribed before me by each of the following witnesses:~~,~~ (type or print name of first witness) who ☐ is personally known to me or ☐ ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, by means of ☐ physical presence or ☐ online notarization; and (type or print name of second witness) who ☐ is personally known to me or ☐ ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, by means of ☐ physical presence or ☐ online notarization. ~~and~~ Subscribed by me in the presence of the testator and the subscribing witnesses, by the means specified herein, all on (date).

...(Signature of Officer)...

...(Print, type, or stamp commissioned name and affix official seal)...

Section 6. Subsection (7) of section 732.521, Florida Statutes, is amended to read:

732.521 Definitions.—As used in ss. 732.521-732.525, the term:

(7) "Qualified custodian" means a person who meets the requirements of s. 732.524(1) ~~s. 732.525(1)~~.

Section 7. Paragraph (b) of subsection (5) of section

732.703, Florida Statutes, is amended to read:

732.703 Effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.—

(5) In the case of an asset described in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c), unless payment or transfer would violate a court order directed to, and served as required by law on, the payor:

(b) As to any portion of the asset required by the governing instrument to be paid after the decedent's death to a primary beneficiary explicitly designated in the governing instrument as the decedent's spouse:

1. If the death certificate states that the decedent was married at the time of his or her death to that spouse, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to such primary beneficiary.

2. If the death certificate states that the decedent was not married at the time of his or her death, or if the death certificate states that the decedent was married to a person other than the spouse designated as the primary beneficiary at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to a secondary beneficiary under the governing instrument.

3. If the death certificate is silent as to the decedent's marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to the primary beneficiary upon delivery to the payor of an affidavit validly

executed by the primary beneficiary in substantially the following form:

STATE OF.....

COUNTY OF.....

Before me, the undersigned authority, personally appeared by the means specified herein, ...(type or print Affiant's name)... ("Affiant"), who swore or affirmed that:

1. ...(Type or print name of Decedent)... ("Decedent") died on ...(type or print the date of the Decedent's death)....

2. Affiant is a "primary beneficiary" as that term is defined in Section 732.703, Florida Statutes. Affiant and Decedent were married on ...(type or print the date of marriage)..., and were legally married to one another on the date of the Decedent's death.

...(Affiant)...

Sworn to or affirmed before me by means of ☐ physical presence or ☐ online notarization by the affiant who ☐ is personally known to me or ☐ ~~who~~ has produced ...(state type of identification)... as identification this .... day of ...(month)..., ...(year)....

...(Signature of Officer)...

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

4. If the death certificate is silent as to the decedent's marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to the secondary beneficiary upon delivery to the payor of an affidavit validly executed by the secondary beneficiary ~~affidavit~~ in substantially the following form:

STATE OF.....
COUNTY OF.....

Before me, the undersigned authority, personally appeared by the means specified herein, ...(type or print Affiant's name)... ("Affiant"), who swore or affirmed that:

1. ...(Type or print name of Decedent)... ("Decedent") died on ...(type or print the date of the Decedent's death)....

2. Affiant is a "secondary beneficiary" as that term is defined in Section 732.703, Florida Statutes. On the date of the Decedent's death, the Decedent was not legally married to the spouse designated as the "primary beneficiary" as that term is defined in Section 732.703, Florida Statutes.

...(Affiant)...

Sworn to or affirmed before me by means of ☐ physical presence or ☐ online notarization by the affiant who ☐ is personally known to me or ☐ ~~who~~ has

produced ...(state type of identification)... as identification this .... day of ...(month)..., ...(year)....

...(Signature of Officer)...

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

Section 8. Subsection (1) of section 747.051, Florida Statutes, is amended to read:

747.051 Summary procedure.—

(1) If the wife of any person defined as an absentee in s. 747.01(1), or his next of kin if said absentee has no wife, shall wish to sell or transfer any property of the absentee which has a gross value of less than $5,000, or shall require the consent of the absentee in any matter regarding the absentee's children or in any other matter in which the gross value of the subject matter is less than $5,000, she may apply to the circuit court for an order authorizing said sale, transfer, or consent without opening a full conservatorship proceeding as provided by this chapter. She may make the application without the assistance of an attorney. Said application shall be made by petition on the following form, which form shall be made readily available to the applicant by the clerk of the circuit court:

In the Circuit Court

In re: ...(Absentee)..., case number .....

PETITION FOR SUMMARY RELIEF

Petitioner, ...(Name)..., whose residence is ...(Street & number)..., ...(City or town)..., and ...(County)..., Florida, and who is the ...(Describe relationship to absentee)... of the absentee, ...(Name)..., states that the absentee has been ...(Imprisoned or missing in action)... since ...(Date)... when ...(Describe details).... Petitioner desires to sell/transfer ...(Describe property)... of the value of ...(Value)... because ...(Give reasons).... The terms of sale/transfer are ...(Give reasons).... Petitioner requires the consent of the absentee for the purpose of .....

...(Petitioner)...

State of .... ~~Florida~~

County of....

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization this .... day of ....., ...(year)..., by ...(name of person making statement)....

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

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

Personally Known ..... OR Produced Identification

Type of Identification Produced.....

Section 9. The amendments made by this act are remedial in nature and shall apply retroactively to January 1, 2020.

Section 10. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 11, 2021

I respectfully request that **Senate Bill #848**, relating to Electronic Legal Documents, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

In 2019, legislation was enacted authorizing the remote, online notarization and witnessing of electronic documents. However, there are some statutory glitches that need to be addressed for the statute to work as intended including incorrect cross references and erroneous forms. SB 848 fixes these statutory glitches and makes the needed technical corrections to the 2019 act. SB 848 does not make any substantive changes to the statutes.

Senator Bobby Powell
Florida Senate, District 30

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

4/16/21
Meeting Date

848
Bill Number (if applicable)

Topic Electronic Legal Documents (Rules)

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title

Address 106 E. College Ave #1200
Street

Phone 850-999-4100

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

Email medenfield@deanmead.com

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.

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 902
INTRODUCER:	Regulated Industries Committee and Senator Rodrigues
SUBJECT:	Community Association Pools
DATE:	April 15, 2021
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 902 exempts from supervision by the Department of Health (DOH) swimming pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments. Under the bill, swimming pools in such communities are not be required to have a permit issued by the DOH.

The bill authorizes the DOH to supervise such pools when necessary to ensure water quality and for required safety features, such as an anti-entrapment system or device, or systems or devices that protect against evisceration and body-and-limb suction entrapment and systems that cease the operation of the pump when a blockage is detected.

Under the bill, the DOH may impose fines of up to $500 per violation. The bill also authorizes the county health department or the DOH to bring an action to abate or enjoin the use of an exempted public swimming pool that is a nuisance because it presents a significant risk to public health by failing to meet sanitation and safety standards.

The bill takes effect July 1, 2021.

II. Present Situation:

Condominium Associations

A condominium is a "form of ownership of real property created under ch. 718, F.S."[1] Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.[2] For unit owners, membership in the association is an unalienable right and a required condition of unit ownership.[3] A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.[4]

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.[5] Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."[6] The board of administrators is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements, which are owned in undivided shares by the unit owners.[7] In litigation, an association's board of directors is in charge of directing attorney actions.[8]

Cooperative Associations

A cooperative differs from a condominium in that cooperative units are not individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely because of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.[9] The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[10]

Section 719.103(12), F.S., defines a "cooperative" to mean:

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[1] Section 718.103(11), F.S.
[2] *See* s. 718.103, F.S.
[3] *Id.*
[4] Section 718.104(2), F.S.
[5] Section 718.303(3), F.S.
[6] Section 718.103(4), F.S.
[7] Section 718.103(2), F.S.
[8] Section 718.103(30), F.S.
[9] *See Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019).
[10] *See* ss. 719.106(1)(g) and 719.107, F.S.

> [T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

Homeowners' Associations in Mobile Home Parks

Chapter 723, F.S., relates to mobile home park lot tenancies. In these communities, the homeowner does not own the real estate upon which the mobile home is located; the homeowner leases the mobile home lot from the mobile home park owner. Homeowners in these communities may form a homeowners' association.[11]

The mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, to the mobile home owner if such costs are not otherwise collected in the lot rental amount and passing on the costs was disclosed prior to tenancy.[12]

Swimming Pools Serving Community Associations

The DOH is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S.

Inspections for swimming pools are conducted by the DOH and the county health departments. In order to operate or continue to operate a public swimming pool, a valid operating permit from the DOH must be obtained.[13] If the DOH determines that the public swimming pool is, or may reasonably be expected to, operate in compliance with state laws and rules, the DOH will issue an operating permit.[14] However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied.[15]

The operating permits must be renewed annually and must be posted in a conspicuous place by the owner or operator of the swimming pool.[16] The owner or operator of the public swimming pool must also post in a prominent position the most recent pool inspection report issued by the DOH pertaining to the health and safety conditions of such facility.[17]

Public swimming pools and spas must have certain safety features, including an anti-entrapment system or device. Pools or spas built before January 1, 1993 with a main drain must have

[11] See ss. 723.075 through 723.0791, F.S.
[12] Section 723.031(5)(c), F.S.
[13] Section 514.031(1), F.S.
[14] Section 514.031(1)(c), F.S.
[15] Section 514.031(1)(d), F.S.
[16] Section 514.031(4), F.S.
[17] Section 514.031(5), F.S.

systems or devices that protect against evisceration and body-and-limb suction entrapment and systems that cease the operation of the pump when a blockage is detected.[18]

The DOH may suspend or revoke a permit for failure to comply with the provisions of ch. 514, F.S., or rules of the DOH. The DOH may also impose fines of up to $500 per violation.[19]

Section 514.06, F.S., provides that any public swimming pool or public bathing place presenting a significant risk to public health by failing to meet sanitation and safety standards established pursuant to ch. 514, F.S., is declared to be a public nuisance, dangerous to health or safety. The county health department or the DOH may bring an action to abate or enjoin as a nuisance a public swimming pool or public bathing place.

Public swimming pools must meet water quality standards.[20] Public swimming pools are subject to additional standards, including standards for the manual addition of chemicals, cleanliness standards, a prohibition against food, beverages, glass containers, and animals in the pool, the operation of the pool circulation system, and water level.[21] A public pool must also keep a daily record of information regarding pool operations using a form required by the DOH.[22]

Pools serving condominiums or cooperatives with no more than 32 units and which are not operated as public lodging establishments are exempt from the DOH's requirements for public pools.[23] Pools serving homeowners' associations are not exempt from supervision by the DOH.

The annual fee for an operating permit is $250 for swimming pools greater than 25,000 gallons and $125 for swimming pools of 25,000 gallons or less. The permit fee for a swimming pool in an "exempted" condominium or cooperative with over 32 units is $50.[24]

III. Effect of Proposed Changes:

The bill creates s. 514.0115(3), F.S., to exempt from supervision by the DOH swimming pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not being operated as public lodging establishments. Under the bill, swimming pools in such communities are not be required to have a permit issued by the DOH. Under the bill, such pools would not be required to obtain a permit from the DOH and would not be inspected.

The bill authorizes the DOH to supervise homeowners' association and other property association pools when necessary to ensure water quality. Under the bill, the DOH may also supervise such swimming pools under s. 514.0315, F.S., relating to required safety features, s. 514.05, F.S., providing administrative penalties, including fines of up to $500 per violation, and

[18] *See* s. 514.0315, F.S.
[19] Section 514.05, F.S.
[20] *See* Fla. Admin. Code R. 64E-9.004.
[21] *Id*.
[22] *Id.*
[23] Section 514.0115(2), F.S.
[24] Fla. Admin. Code R. 64E-9.015. It is not clear why the DOH rule refers to pools in condominium or cooperative with over 32 units as exempted.

s. 514.06, F.S., authorizing the county health department or the DOH to bring an action to abate or enjoin a nuisance the use of a public swimming pool or public bathing place that presents a significant risk to public health by failing to meet sanitation and safety standards.

The bill amends s. 553.77(7), F.S., to correct a cross-reference.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, owners and operators of a swimming pool serving a homeowners' association or other property association that has no more than 32 units or parcels would be saved the expense of annual operating permit for the swimming pool. The annual fee for an operating permit is $250 for swimming pools greater than 25,000 gallons and $125 for pools of 25,000 gallons or less. The annual permit fee for a swimming pool in an exempted condominium or cooperative with over 32 units is $50.[25]

[25] *Supra* n. 22.

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: 514.0115 and 553.77.

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 30, 2021:
The committee substitute:

- Changes the title of the bill from an act relating to "public pool regulations" to an act relating to "community association pools."
- Does not amend s. 514.0115(2)(a), F.S.
- Creates s. 514.0115(3), F.S., to exempt from supervision by the DOH swimming pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments from permitting and inspection requirements.
- Permits the DOH to supervise pools in such communities when necessary to ensure water quality and under ss. 514.0315, 514.05, and 514.06, F.S.
- Amends s. 553.77(7), F.S., to correct a cross-reference.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Rodrigues

580-03586-21 2021902c1

A bill to be entitled

An act relating to community association pools; amending s. 514.0115, F.S.; exempting certain homeowners' association pools from supervision by the Department of Health; providing exceptions; amending s. 553.77, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (3) through (8) of section 514.0115, Florida Statutes, are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

514.0115 Exemptions from supervision or regulation; variances.—

(3) Pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments are exempt from supervision under this chapter, except for supervision necessary to ensure water quality and under ss. 514.0315, 514.05, and 514.06.

Section 2. Subsection (7) of section 553.77, Florida Statutes, is amended to read:

553.77 Specific powers of the commission.—

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health under s. 514.0115(9) ~~pursuant to s. 514.0115(8)~~, including any conditions attached to the granting of the variance.

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

Florida Senate - 2021 **CS for SB 902**

580-03586-21 2021902c1

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

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

April 7, 2021

The Honorable Kathleen Passidomo
Senate Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: CS/SB 902 – Community Association Pools

Dear Madame Chair:

Please allow this letter to serve as my respectful request to place CS/SB 902, relating Community Association Pools, on the next committee agenda.

CS/SB 902 simply closes a loophole and adds parity to existing law as it relates to the regulation of privately owned pools. The bill provides that pools for HOAs and other property associations with 32 parcels or less are exempt from the Department of Health's public pool requirements.

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 950
INTRODUCER:	Transportation Committee and Senator Book
SUBJECT:	Bicycle and Pedestrian Safety
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Proctor	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 950 addresses issues relating to bicycle and pedestrian safety. In summary, the bill:

- Defines the terms "bicycle lane" and "separated bicycle lane."
- Provides requirements for a vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian occupying the same travel lane.
- Requires the Department of Highway Safety and Motor Vehicles (DHSMV) to provide an awareness campaign regarding vehicles overtaking a bicycle, other nonmotorized vehicle, an electric bicycle, or a pedestrian.
- Provides that no-passing zones do not apply to drivers who safely and briefly drive to the left of center of the roadway to overtake a bicycle, other nonmotorized vehicle, an electric bicycle, or a pedestrian.
- Requires a vehicle making a right turn while overtaking and passing a bicycle proceeding in the same direction, to do so only if the bicycle is at least 20 feet from the intersection.
- Authorizes bicyclists riding in groups, after coming to a full stop, to go through an intersection in groups of 10 or fewer.
- Provides guidelines for riding a bicycle in a substandard-width lane and authorizes riders to ride two abreast if certain conditions exit.
- Requires at least 25 questions in the test bank for the driver license test to address bicycle and pedestrian safety.

The bill may have a negative, likely insignificant, fiscal impact to the DHSMV due to program changes to the driver license test and the requirement to provide an awareness campaign. See Section V. Fiscal Impact Statement.

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

II. Present Situation:

Florida law defines the term "bicycle" as every vehicle 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. The term does not include a scooter or similar device.[1]

Florida law defines the term "electric bicycle" as 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 the requirements of one of the following three classifications:

- "Class 1 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
- "Class 2 electric bicycle" means an electric bicycle equipped with a motor that may be used exclusively to propel the electric bicycle and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
- "Class 3 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 28 miles per hour.[2]

An electric bicycle is subject to the same rules and regulations applicable to a bicycle.

Florida law does not define the terms "bicycle lane" or "separated bicycle lane."

Overtaking and Passing

Section 316.083, F.S., provides certain requirements governing the overtaking and passing of a motor vehicle, bicycle, or nonmotorized vehicle. A driver of a vehicle overtaking another vehicle must give an appropriate signal (by hand and arm or signal lamp), and must pass to the left at a safe distance until safely clear of the overtaken vehicle.[3] The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle must pass the bicycle or other nonmotorized vehicle at a safe distance of not less than 3 feet between the vehicle and the bicycle or other nonmotorized vehicle.[4] The driver of an overtaken vehicle may not increase the speed of his or her vehicle when being overtaken.[5] A violation of s. 316.083, F.S., is a noncriminal traffic infraction[6] punishable as a moving violation citation of $60 plus additional court costs and fees that vary by jurisdiction.[7]

[1] Section 316.003(4), F.S.
[2] Section 316.003(22), F.S.
[3] Section 316.083(1), F.S.
[4] Section 316.083(1), F.S.
[5] Section 316.083(2), F.S.
[6] Section 316.083(3), F.S.
[7] Section 318.18(3)(a), F.S.

In 1973, Wisconsin became the first state to enact a 3-feet passing law for bicyclists and as of December 2016, 27 states have enacted 3-feet passing laws.[8] Two states have laws that go beyond a 3-feet passing law.[9] Pennsylvania has a 4-feet passing law and South Dakota enacted a two-tiered passing law in 2015: a 3-feet passing requirement on roads with posted speeds of 35 miles per hour or less, and a minimum of 6 feet separation for roads with speed limits greater than 35 miles per hour.[10]

Move Over Act

In 2002, the "Move Over Act" was enacted into law.[11] The Move Over Act states that drivers must move over as soon as it is safe to do so[12] for any authorized emergency or service vehicles displaying any visible signals while stopped on the roadside, including sanitation vehicles, utility vehicles, and tow trucks.[13] When motorists cannot vacate the lane closest to the emergency or service vehicle, they must slow to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater or to a speed of 5 miles per hour when the posted speed limit is 20 miles per hour or less.[14]

The Department of Highway Safety and Motor Vehicles (DHSMV) is the state agency charged with providing an educational awareness campaign informing the public about the Move Over Act.[15] The DHSMV includes an overview of the Move Over Act in the Florida Class E Driver License Official Handbook,[16] and provides numerous educational and informational materials on the Move Over Act on the DHSMV website.[17] A violation of the Move Over Act is a noncriminal traffic infraction[18] punishable as a moving violation citation of $60 plus additional court costs and fees that vary by jurisdiction.[19]

No-Passing Zones

The Department of Transportation (DOT) and local authorities are authorized to determine when overtaking and passing or driving to the left of the roadway would be especially hazardous and to require signs and markings to be placed to designate a no-passing zone.[20] Drivers must comply with the no-passing signs and markings, except when an obstruction exists making it necessary to drive to the left of the center of the highway, or if the driver is turning left into or from an alley, private road, or driveway.[21] A violation of s. 316.0875, F.S., is a noncriminal traffic

[8] National Conference of State Legislatures, *Safely Passing Bicyclists Chart* (December 28, 2016), available at http://www.ncsl.org/research/transportation/safely-passing-bicyclists.aspx (last visited March 26, 2021).
[9] *Id.*
[10] *Id.*
[11] Section 316.126, F.S.
[12] Section 316.126(b)1., F.S.
[13] Section 316.126(b), F.S.
[14] Section 316.126(b)2., F.S.
[15] Section 316.126(c), F.S.
[16] Department of Highway Safety and Motor Vehicles, Official Florida Driver License Handbook (2020), p. 56 available at https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited March 26, 2021).
[17] Department of Highway Safety and Motor Vehicles, *Driving Safety: Move Over, Florida!*, available at https://www.flhsmv.gov/safety-center/driving-safety/move-over/ (last visited March 26, 2021).
[18] Section 316.126(6), F.S.
[19] Section 318.18(3)(a), F.S.
[20] Section 316.0875(1), F.S.
[21] Section 316.0875(3), F.S.

infraction[22] punishable as a moving violation citation of $60 plus additional court costs and fees that vary by jurisdiction.[23]

Turning at Intersections

The driver of a vehicle turning right at an intersection must make the right turn as close as practicable to the right-hand curb or edge of the roadway.[24] The driver of a vehicle turning left at an intersection must make the left turn in a lane lawfully available for vehicles moving in such direction.[25] A person riding a bicycle and turning left is entitled to the full use of the left turn lane when making a left turn.[26] Additionally, a person riding a bicycle can make a left turn by staying to the right side of the road, proceeding across the intersection, then proceeding across the perpendicular intersection.[27] At intersections with a traffic control device, no driver may turn at an intersection other than as directed by such device.[28] A violation of s. 316.0875, F.S., is a noncriminal traffic infraction[29] punishable as a moving violation citation of $60 plus additional court costs and fees that vary by jurisdiction.[30]

Bicycle Regulations

There are specific regulations that bicyclists have to adhere to while on the road. These regulations are found in s. 316.2065, F.S. Some of the regulations include:

- Requiring a bicycle rider or passenger who is under 16 years of age to wear a bicycle helmet.[31]
- Requiring any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing to ride in the lane marked for bicycle use or, if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway except under certain circumstances.[32]
- Prohibiting persons riding bicycles upon a roadway from riding more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.[33]
- Requiring every bicycle in use between sunset and sunrise to be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear.[34]

[22] Section 316.0875(4), F.S.
[23] Section 318.18(3)(a), F.S.
[24] Section 316.151(1)(a), F.S.
[25] Section 316.151(1)(b), F.S.
[26] *Id.*
[27] Section 316.151(1)(c), F.S.
[28] Section 316.151(2), F.S.
[29] Section 316.151(3), F.S.
[30] Section 318.18(3)(a), F.S.
[31] Section 316.2065(3)(d), F.S.
[32] Section 316.2065(5)(a), F.S.
[33] Section 316.2065(6), F.S.
[34] Section 316.2065(7), F.S.

Driver License Knowledge Exam

With certain exceptions, every applicant for an original driver license is required to pass an examination.[35] An applicant for a Class E driver license will be given a Class E Knowledge Exam (Exam) that includes understanding highway signs and traffic laws in this state.[36] The Exam consists of 50 multiple-choice questions.[37] The questions are selected randomly from the 309 questions contained in the DHSMV's test bank, which has 18 questions specific to pedestrian and bicycle safety. Whether or not an applicant will see a bicycle or pedestrian question on the test depends on the number of questions within that category, the number of questions pulled from a category, and how many questions a customer sees while taking the test.[38] To pass the Exam, an applicant must answer 40 out of 50 questions correctly.[39]

The Official Florida Driver License Handbook (Handbook)[40] is provided to applicants by the DHSMV to prepare applicants for the Exam. The Handbook provides information on bicycle safety, including bicycle lanes,[41] bicycle crossings,[42] and sharing the road with bicycles.[43] Likewise, the Handbook provides information on pedestrian safety, including crosswalks,[44] yielding to pedestrians,[45] and sharing the road with pedestrians.[46]

Vulnerable Road User

The term "vulnerable road user" is only referenced in s. 316.027, F.S., for purposes of providing penalty enhancements to motorists involved in leaving the scene of a crash resulting in injury or the death of a person. Such an offense is ranked one level higher (for purposes of sentencing and determining incentive gain-time eligibility) if the victim of the offense was a vulnerable road user.[47] A pedestrian[48] and a person riding a bicycle[49] are both considered vulnerable road users for purposes of s. 316.027, F.S.

Pedestrian and Bicycle Traffic Crash Data

Currently, pedestrians and bicyclists account for 26 percent of all traffic fatalities in Florida.[50] In 2018, Florida was ranked tenth nationwide in the fatality rate of pedestrians with 3.14 pedestrian

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[35] Section 322.12(1), F.S.
[36] Section 322.12(3), F.S.
[37] Department of Highway Safety and Motor Vehicles, *Class E Knowledge Exam & Driving Skills Test*, available at https://www.flhsmv.gov/driver-licenses-id-cards/licensing-requirements-teens-graduated-driver-license-laws-driving-curfews/class-e-knowledge-exam-driving-skills-test/ (last visited March 26, 2021).
[38] Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 950*, p. 4. (March 9, 2021).
[39] *Supra*, FN 37.
[40] *Supra*, FN 16.
[41] *Id.* at 14.
[42] *Id.* at 19.
[43] *Id.* at 39.
[44] *Id.* at 15.
[45] *Id.* at 15.
[46] *Id.* at 39.
[47] Section 316.027(2)(f), F.S.
[48] Section 316.027(1)(b)1., F.S.
[49] Section 316.027(1)(b)2., F.S.
[50] Florida Department of Transportation, Traffic Crash Reports, Crash Dashboard, available at https://www.flhsmv.gov/traffic-crash-reports/crash-dashboard/ (last visited on February 24, 2021).

fatalities per 100,000 population.[51] In 2019, there were 6,590 bicycle crashes in Florida.[52] As a result of these crashes there were 160 bicycle fatalities in 2019.[53]

Florida Pedestrian and Bicycle Fatality Statistics 2018-2020[54]

Year	Pedestrian Fatalities	Bicycle Fatalities
2020	699	157
2019	734	156
2018	720	160

Safety Initiatives for Bicyclists and Pedestrians

The Florida Strategic Highway Safety Plan (SHSP) provides a framework for reducing traffic fatalities and serious injuries on all public roads.[55] The SHSP establishes targeted statewide goals, objectives, and key emphasis areas developed in consultation with federal, state, local, and private sector safety stakeholders.[56] One of the key areas addressed in the SHSP are vulnerable road users, as well as pedestrian and bicycle safety issues with a goal to reduce the rates of fatalities, injuries, and crashes of those users.[57] The Florida Pedestrian and Bicycle Strategic Safety Plan (PBSSP) supplements and expands on the SHSP by providing more detailed objectives and strategies to improve pedestrian and bicycle safety in Florida.[58] The purpose of Florida's PBSSP is to focus funding and resources on the areas that have the greatest opportunity to reduce pedestrian and bicycle fatalities, injuries, and crashes.[59] DOT is the designated lead agency for the PBSSP and provides funding and support.[60]

"Alert Today Florida" also known as "Alert Today Alive Tomorrow" is DOT's campaign brand for Florida's pedestrian and bicycle focused initiative.[61] The campaign establishes messaging that supports engineering and enforcement efforts, increases awareness, improves compliance with traffic laws, and calls communities to action.[62] Educational materials are distributed to motorists, pedestrians, and bicyclists to ensure the right message reaches the right person in a language they can understand.[63] The materials are in the form of print, television, radio, billboards, digital and social media, and transit advertising.[64]

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[51] Governors Highway Safety Association, *Pedestrian Traffic Fatalities by State*, available at https://www.ghsa.org/sites/default/files/2019-02/FINAL_Pedestrians19.pdf (last visited March 26, 2021).
[52] *Supra*, FN 49.
[53] *Id.*
[54] *Id.*
[55] The Center for Urban Transportation Research University of South Florida, *Florida Pedestrian and Bicycle Strategic Safety Plan* (February 2013), p. 1, available at http://www.fdot.gov/safety/6-Resources/FloridaPedestrianandBicycleStrategicSafetyPlan.pdf (last visited January 5, 2018).
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.* at 3.
[60] *Id.*
[61] *Supra* FN 50, at 4.
[62] *Id.*
[63] *Id.*
[64] *Id.*

III. Effect of Proposed Changes:

The bill amends s. 316.003, F.S., to define "bicycle lane" as any portion of a roadway or highway which is designated by pavement markings and signs for preferential or exclusive use by bicycles. Additionally, the bill defines "separated bicycle lane" as a bicycle lane that is separated from motor vehicle traffic by a physical barrier.

The bill amends s. 316.083, F.S., providing that the driver of a vehicle overtaking a bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian occupying the same travel lane must pass the bicycle, other nonmotorized vehicle, electric bicycle or pedestrian at a safe distance of not less than 3 feet, or if such movement cannot be safely accomplished, must remain at a safe distance behind the bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian until the driver can safely pass at a distance of not less than 3 feet and is safely clear of the overtaken bicycle, other nonmotorized vehicle, electric bicycle, or pedestrian.

The provisions relating to overtaking bicycles, other nonmotorized vehicles, electric bicycles, do not apply when the bicycle, other nonmotorized vehicle, or electric bicycle occupies a separated bicycle lane. A violation is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S. The statutory base fine is $60,[65] with additional court costs and fees that vary by jurisdiction.[66]

Additionally, the bill requires the DHSMV to provide an annual educational awareness campaign that informs the motoring public about the safety precautions that must be taken when overtaking a bicycle, other nonmotorized vehicle, electric bicycle, or pedestrian, and to provide information about such precautions in all newly printed driver license education materials.

The bill amends s. 322.12, F.S., to require at least 25 questions in DHSMV's test bank for each noncommercial driver license applicant to address bicycle and pedestrian safety. This may lead to fewer questions devoted to an applicant's understanding of highway signs and knowledge of traffic laws.[67]

The bill provides an exception to the no-passing zone requirements in s. 316.0875, F.S., when a driver safely and briefly drives to the left of the center line only to the extent necessary to pass a bicycle, other nonmotorized vehicle, electric bicycle, or pedestrian occupying the same travel lane.

The bill amends s. 316.151, F.S., to require the driver of a motor vehicle who is overtaking a bicycle proceeding in the same direction, to give an appropriate signal and make a right turn only if the bicycle is at least 20 feet from the intersection onto a highway, public or private roadway, or driveway.

The bill amends s. 316.2065, F.S., to provide that on roads that contain a substandard width lane, persons riding a bicycle must ride single file to maintain a minimum of 3 feet of space for vehicles to pass persons operating a bicycle. In addition, the bill prohibit persons riding bicycles

[65] Section 318.18(3)(a), F.S.
[66] Florida Clerk of Courts, *2020 Distribution Schedule*, p. 23.
[67] *Supra*, FN 38.

in a roadway or in a bike lane from riding more than two abreast except on a bicycle path. Where bicycle lanes exist, persons riding bicycles may ride two abreast if both are able to remain within the bicycle lane. If the bicycle lane is too narrow to allow two persons riding bicycles to ride two abreast, the persons must ride single-file and within the bicycle lane. On roads that contain a substandard width lane, persons riding a bicycle may temporarily ride two abreast only to avoid hazards in the roadway or to overtake another person riding a bicycle.

The bill authorize persons riding bicycles in groups, after coming to a full stop, to proceed through a stop sign in a group of 10 or fewer at a time. Additionally, the bill requires motor vehicle operators to allow the group of 10 or fewer bicyclists to travel through the intersection before moving forward.

A violation of this provision would be a noncriminal traffic infraction, punishable as a pedestrian violation. The base fine is $15,[68] with additional court costs and fees that vary by jurisdiction.[69]

The bill provides technical and conforming changes in ss. 212.05, 316.306, and 655.960, F.S.

The bill has 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.

[68] Section 318.318(1), F.S.
[69] Florida Clerk of Courts, *2020 Distribution Schedule*, p. 21.

B. Private Sector Impact:

The change in enforcement of requirements relating to overtaking and passing a bicycle, pedestrian, or nonmotorized vehicle may result in more motorists being assessed traffic fines; however, the fiscal impact is indeterminate.

C. Government Sector Impact:

To the extent there is an increase in the number of traffic citations issued due to the new requirements relating to overtaking and passing a bicycle, pedestrian, or nonmotorized vehicle the state may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

Each May, the DHSMV conducts a "Share the Road" safety campaign focusing on motorcycle, bicycle, and commercial vehicle safety. If the awareness provisions of the bill can be added to that existing awareness campaign, the DHSMV can absorb the costs within existing resources. However, if the DHSMV is required to do a new, standalone awareness campaign the DHSMV states that additional resources of $50,000 to $60,000 would be required to conduct an effective public awareness campaign.[70]

The DHSMV may incur expenditures associated with ensuring at least 25 test questions in the DHSMV test bank address bicycle and pedestrian safety. This cost can be absorbed within existing resources.[71]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.083, 316.0875, 316.151, 316.2065, 322.12, 212.05, 316.306, and 655.960.

IX. Additional Information:

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

CS by Transportation on March 30, 2021:

- Clarifies that when overtaking a bicycle, other motorized vehicle, electric bicycle, or pedestrian on the road, a vehicle must pass at a safe distance of not less than 3 feet from the bicycle, other motorized vehicle, electric bicycle, or pedestrian.

[70] *Supra*, FN 67 at p. 5.
[71] *Id*.

- Requires persons riding bicycles to ride single-file in substandard width lanes.
- Authorizes persons riding bicycles to ride two abreast in a bicycle lane, if both are able to remain within the bicycle lane.
- Requires persons riding bicycles to ride single-file in a bicycle lane if the bicycle lane is not wide enough to ride two abreast.
- Authorizes persons riding bicycles to temporarily ride two abreast to avoid hazards or to overtake another bicyclist.
- Removes the requirement that 20 percent of the questions on the driver license test be related to bicycle and pedestrian safety, and replaces it with a requirement that a minimum of 25 questions in the test bank be related to bicycle and pedestrian safety.

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 Transportation; and Senator Book

596-03592-21 2021950c1

A bill to be entitled

An act relating to bicycle and pedestrian safety; amending s. 316.003, F.S.; defining the terms "bicycle lane" and "separated bicycle lane"; amending s. 316.083, F.S.; revising and providing requirements for the driver of a motor vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; providing exceptions; providing a penalty; requiring the Department of Highway Safety and Motor Vehicles to provide an annual awareness and safety campaign regarding certain safety precautions; amending s. 316.0875, F.S.; exempting a motor vehicle driver from certain provisions relating to no-passing zones when overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; making a technical change; amending s. 316.151, F.S.; revising requirements for vehicles turning at intersections; providing turn signaling and distance requirements for a motor vehicle driver when overtaking and passing a bicycle; making a technical change; amending s. 316.2065, F.S.; providing requirements for persons riding bicycles on a substandard-width lane; prohibiting persons riding bicycles in a bicycle lane from riding more than two abreast; providing requirements for riding in a bicycle lane; providing requirements for persons riding bicycles in groups when stopping at a stop sign; making a technical change; amending s. 322.12, F.S.; requiring a minimum number of questions in the

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

596-03592-21 2021950c1

test bank for a Class E driver license to address bicycle and pedestrian safety; amending ss. 212.05, 316.306, and 655.960, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (5) through (76) and (77) through (105) of section 316.003, Florida Statutes, are redesignated as subsections (6) through (77) and (79) through (107), respectively, new subsections (5) and (78) are added to that section, and present subsection (62) of that section is amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(5) BICYCLE LANE.—Any portion of a roadway or highway which is designated by pavement markings and signs for preferential or exclusive use by bicycles.

(63)~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (86)(b) ~~(84)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(78) SEPARATED BICYCLE LANE.—A bicycle lane that is separated from motor vehicle traffic by a physical barrier.

Section 2. Section 316.083, Florida Statutes, is amended to read:

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

316.083 Overtaking and passing a vehicle, a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian.—The following rules shall govern the overtaking and passing of vehicles, bicycles and other nonmotorized vehicles, electric bicycles, and pedestrians ~~proceeding in the same direction~~, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction must ~~shall~~ give an appropriate signal as provided for in s. 316.156, must ~~shall~~ pass to the left thereof at a safe distance, and must ~~shall~~ not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian occupying the same travel lane must pass the bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian at a safe distance of not less than 3 feet or, if such movement cannot be safely accomplished, must remain at a safe distance behind the bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian until the driver can safely pass at a distance of not less than 3 feet and must safely clear the overtaken bicycle or other nonmotorized vehicle, electric bicycle, or pedestrian.

(3) The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle, or an electric bicycle, occupying a bicycle lane must pass the bicycle, other nonmotorized vehicle, or electric bicycle at a safe distance of not less than 3 feet between the vehicle and the bicycle, other nonmotorized vehicle, or electric bicycle.

(4) Subsections (2) and (3) do not apply when a bicycle or other nonmotorized vehicle, or an electric bicycle, occupies a separated bicycle lane.

(5)~~(2)~~ Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle must ~~shall~~ give way to the right in favor of the overtaking vehicle, on audible signal or upon the visible blinking of the headlamps of the overtaking vehicle if such overtaking is being attempted at nighttime, and must ~~shall~~ not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(6)~~(3)~~ A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(7) The department must provide an annual awareness and safety campaign informing the public about the safety precautions to be taken when overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian.

Section 3. Section 316.0875, Florida Statutes, is amended to read:

316.0875 No-passing zones.—

(1) The Department of Transportation and local authorities may ~~are authorized to~~ determine those portions of any highway under their respective jurisdictions ~~jurisdiction~~ where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones.~~, and~~ When such signs or markings are in place and clearly visible to an ordinarily observant person, a ~~every~~ driver of a vehicle must ~~shall~~ obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), a ~~no~~ driver may not, ~~shall~~ at any time, drive on the left side of the roadway within ~~with~~ such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section does not apply to a driver who safely and briefly drives to the left of the center of the roadway only to the extent necessary to:

(a) Avoid ~~when~~ an obstruction;

(b) Turn ~~exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning~~ left into or from an alley, a private road, or a driveway; or

(c) Overtake and pass a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian pursuant to s. 316.083(2) or (3).

(4) A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 4. Section 316.151, Florida Statutes, is amended to read:

316.151 Required position and method of turning at intersections.—

(1)(a) *Right turn.*—The driver of a vehicle intending to turn right at an intersection onto a highway, public or private roadway, or driveway must ~~shall do so as follows~~:

1.~~(a)~~ Make ~~*Right turn.*~~ both the approach for a right turn and a right turn ~~shall be made~~ as close as practicable to the

right-hand curb or edge of the roadway.

2. When overtaking and passing a bicycle proceeding in the same direction, give an appropriate signal as provided for in s. 316.156 and make the right turn only if the bicycle is at least 20 feet from the intersection.

(b) *Left turn.*—

1. The driver of a vehicle intending to turn left at an ~~any~~ intersection onto a highway, public or private roadway, or driveway must ~~shall~~ approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle~~,~~ and must make~~, after entering the intersection,~~ the left turn ~~shall be made~~ so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered.

2. A person riding a bicycle and intending to turn left in accordance with this section is entitled to the full use of the lane from which the turn may legally be made. The person must:

a. Whenever practicable, make the left turn ~~shall be made~~ in that portion of the intersection to the left of the center of the intersection; or~~.~~

~~(c) *Left turn by bicycle.*—In addition to the method of making a left turn described in paragraph (b), a person riding a bicycle and intending to turn left has the option of following the course described hereafter: The rider shall~~

b. Approach the turn as close as practicable to the right curb or edge of the roadway; after proceeding across the intersecting roadway, make the turn ~~shall be made~~ as close as practicable to the curb or edge of the roadway on the far side of the intersection; and, before proceeding, ~~the bicyclist shall~~

comply with any official traffic control device or police officer regulating traffic on the highway along which the person ~~bicyclist~~ intends to proceed.

(2) The state, county, and local authorities in their respective jurisdictions may cause official traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When such devices are so placed, a ~~no~~ driver of a vehicle may not turn a vehicle at an intersection other than as directed and required by such devices.

(3) A person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 5. Subsections (5), (6), and (19) of section 316.2065, Florida Statutes, are amended to read:

316.2065 Bicycle regulations.—

(5)(a) A ~~Any~~ person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing must ~~shall~~ ride in the bicycle lane ~~marked for bicycle use~~ or, if there is no bicycle lane on the roadway ~~is marked for bicycle use~~, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

2. When preparing for a left turn at an intersection or into a private road or driveway.

3. When reasonably necessary to avoid any condition or

potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. On roads that contain a substandard-width lane, persons operating bicycles must ride single-file to maintain the minimum 3 feet of space for motor vehicles to pass persons operating a bicycle as provided in s. 316.083. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) A ~~Any~~ person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(6)(a) Persons riding bicycles upon a roadway or in a bicycle lane may not ride more than two abreast except on a bicycle path ~~paths or parts of roadways set aside for the exclusive use of bicycles~~. Persons riding two abreast may not impede traffic when traveling at less than the normal speed of traffic at the time and place and under the conditions then existing and must ~~shall~~ ride within a single lane. Where bicycle lanes exist, persons riding bicycles may ride two abreast if both are able to remain within the bicycle lane. If the bicycle lane is too narrow to allow two persons riding bicycles to ride two abreast, the persons must ride single-file and within the bicycle lane. On roads that contain a substandard-width lane as defined in subparagraph (5)(a)3., persons riding bicycles may temporarily ride two abreast only to avoid hazards in the roadway or to overtake another person riding a bicycle.

(b) When stopping at a stop sign, persons riding bicycles in groups, after coming to a full stop and obeying all traffic laws, may proceed through the stop sign in a group of 10 or fewer at a time. Motor vehicle operators must allow each such group to travel through the intersection before moving forward.

(19) Except as otherwise provided in this section, a person who violates ~~violation of~~ this section commits ~~is~~ a noncriminal traffic infraction, punishable as a pedestrian violation as provided in chapter 318. A law enforcement officer may issue traffic citations for a violation of subsection (3) or subsection (15) only if the violation occurs on a bicycle path or road, as defined in s. 334.03. However, a law enforcement officer may not issue citations to persons on private property, except any part thereof which is open to the use of the public for purposes of vehicular traffic.

Section 6. Subsection (3) of section 322.12, Florida Statutes, is amended to read:

322.12 Examination of applicants.—

(3) For an applicant for a Class E driver license, such examination shall include all of the following:

(a) A test of the applicant's eyesight given by the driver license examiner designated by the department or by a licensed ophthalmologist, optometrist, or physician.

(b) ~~and~~ A test of the applicant's hearing given by a driver license examiner or a licensed physician.

(c) ~~The examination shall also include~~ A test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic; his or her knowledge of the traffic laws of this state, including laws regulating

driving under the influence of alcohol or controlled substances, driving with an unlawful blood-alcohol level, and driving while intoxicated; and his or her knowledge of the effects of alcohol and controlled substances upon persons and the dangers of driving a motor vehicle while under the influence of alcohol or controlled substances. At least 25 questions within the bank of test questions must address bicycle and pedestrian safety.

(d) ~~and shall include~~ An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

Section 7. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented for a period of

less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(14)(a) ~~s. 316.003(13)(a)~~ to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 8. Paragraph (a) of subsection (3) of section 316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003(107) ~~s. 316.003(105)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

Section 9. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(86)(a) or (b) ~~s. 316.003(84)(a) or (b)~~,

including any adjacent sidewalk, as defined in s. 316.003.

Section 10. 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: April 5, 2021

I respectfully request that **Senate Bill 950**, relating to Bicycle and Pedestrian Safety, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

This bill will improve pedestrian and bicycle safety, and prevent injuries and fatalities. It will amend current 3-foot bicycle passing laws to create a "Move Over for People" law for Florida drivers. It provides law enforcement with an enforceable law based on action and not measurement guesswork, and gives drivers a clear directive. This bill also provides for a public awareness campaign to educate drivers on the new Move Over for People requirement. Additionally this bill protects cyclists by creating no-passing zones and defining the terms "bicycle lane" and "separated bicycle lane." This bill has the power to save lives and make our roadways safer.

Thank you for your consideration.

Lauren Book

Senator Lauren Book
Florida Senate, District 32

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 964
INTRODUCER:	Regulated Industries and Senators Diaz and Taddeo
SUBJECT:	Environmental Compliance Costs
DATE:	April 15, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Favorable**
2.	Sharon	Imhof	RI	**Fav/CS**
3.	Anderson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 964 revises the definition of "environmental compliance costs" in the Florida Energy Efficiency and Conservation Act to include costs or expenses incurred by an electric utility after July 1, 2021, for the construction and operation of a wastewater reuse system. Operation of the wastewater reuse system must serve to further compliance with environmental laws or regulations that apply to the electric utility. The system must fully or partially satisfy a local government's statutory reclaimed water reuse requirements, including those for ocean outfalls. The bill requires at least 50 percent of reclaimed water produced to be used in conjunction with the water requirements of facilities owned by the electric utility. This is required in order to offset all or part of the electric utility's water use, as authorized by permit. This revision will allow utilities to petition the Florida Public Service Commission (PSC) for recovery of such costs through a cost-recovery factor, which is separate from the utility's base rates.

The bill takes effect on July 1, 2021.

II. Present Situation:

Environmental Cost Recovery

The Florida Energy Efficiency and Conservation Act establishes a mechanism for utilities to petition the PSC for recovery of specified environmental compliance costs through a charge

separate from the utility's base rates.[1] This is referred to as the environmental cost-recovery clause (ECRC).[2]

Environmental compliance costs are defined as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.[3] Environmental compliance costs include, but are not limited to:

- Inservice capital investments, including the electric utility's last authorized rate of return on equity;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs;
- Direct taxes on environmental equipment;
- Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into between the electric utility and the Department of Environmental Protection (DEP) or the United States Environmental Protection Agency (EPA) for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility; and
- Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and universities.[4]

Typically, the ECRC allows utilities to recover costs that are not easily controlled by the utility, such as fuel costs which fluctuate with the market or environmental costs based on new regulations.[5] Revenue collected through the ECRC provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.[6]

An electric utility may submit a petition to the PSC describing the utility's proposed environmental compliance activities and projected environmental compliance costs.[7] If approved by the PSC, the utility will be allowed to recover prudently incurred environmental compliance costs, and any amendments to the costs or change in the application or enforcement of the costs, through an environmental compliance cost-recovery factor that is separate and apart from the

[1] *See* s. 366.8255(2), F.S.
[2] *See Citizens v. Brown*, 269 So. 3d 498 (Fla. 2019).
[3] Section 366.8255(1)(d), F.S. Environmental laws or regulations are defined as "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment." Section 366.8255(1)(c), F.S.
[4] Section 366.8255(1)(d), F.S.
[5] Public Service Commission, *Bill Analysis for SB 964* (Feb. 11, 2021) (on file with the Senate Committee on Regulated Industries).
[6] *Id*.
[7] Section 366.8255(2), F.S.

utility's base rates.[8] An adjustment for the level of costs currently being recovered through base rates or other rate adjustment clauses must be included in the petition.[9]

The environmental compliance cost-recovery factor must be set periodically (at least annually) based on projections of the utility's environmental compliance costs during the forthcoming recovery period. [10] The environmental compliance cost-recovery factor must periodically reconcile the actual environmental compliance costs with the projections on which past factors have been set.[11] Environmental compliance costs recovered through the environmental cost-recovery factor must be allocated to the customer classes using statutory criteria.[12]

Reuse of Reclaimed Water

Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives by the Legislature.[13] Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.[14] Whereas, reclaimed water is defined as water from a "domestic wastewater"[15] treatment facility that has received at least "secondary treatment"[16] and basic disinfection[17] for reuse.[18]

Wastewater reuse is governed by ss. 403.064 and 403.086, F.S. Permitting requirements and limitations are detailed in s. 403.064, F.S. Permits issued by the Department of Environmental Protection for domestic wastewater treatment facilities must be consistent with applicable requirements for consumptive use permits.[19]

Reclaimed water is reused for various purposes, such as irrigation, industrial uses, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.[20] Industrial uses include plant wash down, processing water, and cooling water purposes.[21] Several power plants throughout the state use reclaimed water for cooling purposes.[22]

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[8] *Id*.
[9] *Id*.
[10] Section 366.8255(3), F.S.
[11] *Id*.
[12] Section 366.8255(4), F.S.
[13] *See* ss. 403.064(1) and 373.250(1), F.S.
[14] Fla. Admin. Code R. 62-610.200(52)(2020).
[15] "Domestic wastewater" is defined as "wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants." Section 367.021(5), F.S.
[16] Fla. Admin. Code R. 62-610.200(54) defines the term "secondary treatment" to mean "wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C."
[17] Fla. Admin. Code R. 62-600.440(5) provides the requirements for basic disinfection.
[18] Section 373.019(17), F.S.; Fla. Admin. Code R. 62-610.200(48).
[19] Section 403.064(8). Part II of ch. 373, F.S., governs consumptive use permits.
[20] Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida's Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), (on file with the Senate Committee on Regulated Industries).
[21] Department of Environmental Protection, *Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water (last visited Feb. 24, 2021).
[22] *See* Department of Environmental Protection, *Industrial Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/industrial-uses-reclaimed-water (last visited Feb. 24, 2021).

Local governments are authorized and encouraged under Florida law to implement programs for the reuse of reclaimed water and are authorized to allocate the costs of such programs in a reasonable manner.[23]

Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters. There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties that discharge or previously discharged approximately 300 million gallons per day of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.[24] However, state law prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025.[25] In addition, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008, are required to install a reuse system no later than December 31, 2025.[26] Existing discharges through ocean outfalls were required to meet "advanced waste treatment"[27] requirements by December 31, 2018.[28]

III. Effect of Proposed Changes:

The bill revises the definition of "environmental compliance costs" within the Environmental Cost Recovery provision of the Florida Energy Efficiency and Conservation Act. The definition is expanded to include all costs or expenses incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system. Operation of the wastewater reuse system must serve to further compliance with environmental laws or regulations that apply to the electric utility. To qualify, the system must fully or partially satisfy a local government's statutory reclaimed water reuse requirements, including ocean outfall requirements. At least 50 percent of the reclaimed water produced by the system must be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility. This is required in order to offset all or part of the electric utility's water use, as authorized by permit. This revision will allow utilities to petition the PSC for recovery of such costs through an environmental cost-recovery factor, which is separate from the utility's base rates.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[23] Section 403.064(9)-(10), F.S.
[24] University of Florida, Department of Environmental Engineering Services, *Ocean Outfall Study Final Report* at p. ES-1 (Apr. 18, 2006), *available at* https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf (last visited Feb. 23, 2021).
[25] Section 403.086(10), F.S.; ch. 2008-232, Laws of Fla.
[26] Section 403.086(10)(c), F.S.
[27] Section 403.086(4), F.S.
[28] Section 403.086(10)(b), F.S.

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 may result in higher electric rates for consumers if an electric utility's petition for an environmental cost-recovery clause is approved by the PSC.[29]

C. Government Sector Impact:

The bill may result in higher electric rates for local governments if an electric utility's petition for an environmental cost-recovery clause is approved by the PSC.[30]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 366.8255 of the Florida Statutes.

[29] PSC Bill Analysis, *supra* note 5.
[30] *Id*.

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:

- Specifies that the wastewater utility, which the electric utility is contracting with for construction and operation of a wastewater reuse system, must be a governmental utility.
- Requires the operation of the wastewater reuse system to be in compliance with environmental laws or regulations applicable to the electric utility.
- Requires at least 50 percent of the reclaimed water produced by the reuse system to offset all or part of the electric utility's water use, as authorized by its permit.

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 Senators Diaz and Taddeo

580-02310-21 2021964c1

A bill to be entitled

An act relating to environmental compliance costs; amending s. 366.8255, F.S.; redefining the term "environmental compliance costs" to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 366.8255, Florida Statutes, is amended to read:

366.8255 Environmental cost recovery.—

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

(d) "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.

2. Operation and maintenance expenses.

3. Fuel procurement costs.

4. Purchased power costs.

5. Emission allowance costs.

6. Direct taxes on environmental equipment.

7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental

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Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

8. Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

9. Costs or expenses prudently incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system where operation of the system will serve to further compliance with environmental laws or regulations that apply to the electric utility and where the system fully or partially satisfies a local government's reclaimed water reuse requirements under s. 403.064 or s. 403.086. At least 50 percent of the reclaimed water the system produces must be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility in order to offset all or part of the electric utility's water use authorized by permit.

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

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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 25, 2021

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request CS/SB 964 Environmental Compliance Cost be placed on the next committee agenda.

CS/SB 964 revises the definition of "environmental compliance costs" in the Florida Energy Efficiency and Conservation Act to include costs or expenses incurred by an electric utility after July 1, 2021, for the construction and operation of a wastewater reuse system. Operation of the wastewater reuse system must serve to further compliance with environmental laws or regulations that apply to the electric utility. The system must fully or partially satisfy a local government's statutory reclaimed water reuse requirements, including those for ocean outfalls. The bill requires at least 50 percent of reclaimed water produced to be used in conjunction with the water requirements of facilities owned by the electric utility. This is required in order to offset all or part of the electric utility's water use, as authorized by permit. This revision will allow utilities to petition the Florida Public Service Commission (PSC) for recovery of such costs through a cost-recovery factor, which is separate from the utility's base rates.

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:	CS/CS/SB 1060
INTRODUCER:	Regulated Industries Committee; Judiciary Committee and Senator Bradley
SUBJECT:	Limitation of Liability for Voluntary Engineering or Architectural Services
DATE:	April 15, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Kraemer	Imhof	RI	**Fav/CS**
3.	Bond	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1060 creates immunity from civil liability for an engineer, architect, or structures specialist furnishing engineering or architectural services as a volunteer under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency, in response to a declared federal, state, or local emergency. The liability protection does not apply to an act or omission that was done with gross negligence or willful misconduct.

The bill is effective July 1, 2021.

II. Present Situation:

The United States Army Corps of Engineers, through its Urban Search and Rescue Program, notes that urban search and rescue is a dangerous undertaking conducted in buildings that are fully or partially collapsed.[1] Typically, these structures are multi-storied and contain heavy debris with a high potential for additional collapse.[2] Rescue crews utilize trained professionals that assist them in moving or shoring up debris in order to rescue victims in and around the collapsed structure. Time is of the essence in these endeavors. The professionals must balance

[1] *See* US Army Corps of Engineers, *Urban Search and Rescue Program, Fact Sheet (Feb. 2009), available at* https://www.swd.usace.army.mil/Portals/42/docs/emergencymgmt/USR2009%5B1%5D.pdf (last visited Mar. 10, 2021).
[2] *Id*.

the safety of the rescuers with the need to find and retrieve trapped and injured civilians before they expire.

Professionals who Advise Urban Search and Rescue Teams

Engineers

An engineer is a professional practicing engineering. Engineering is:

> any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.[3]

Florida regulates engineers through the Department of Business and Professional Regulation.[4] Engineers are authorized to practice within a qualified business entity, such as a corporation.[5]

Architects

An architect is a professional practicing architecture. Architecture is the provision of:

> services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.[6]

Florida regulates architects through the Department of Business and Professional Regulation.[7] Architects are authorized to practice within a qualified business entity, such as a corporation.[8]

[3] Section 471.005(7), F.S.
[4] *See generally*, ch. 471, F.S.
[5] Section 471.023, F.S.
[6] Section 481.203(2), F.S.
[7] *See generally*, ch. 481, F.S.
[8] Section 481.219, F.S.

Structures Specialists

Structures specialists are engineers who have been specially trained by the United States Army Corps of Engineers. Engineers trained as Structures Specialists can evaluate a damaged building or hazard in order to reduce the risks to rescue personnel and victims. Structures Specialists design shoring systems to stabilize structures for rescuers to gain safe access to the victims. The Structures Specialists are trained in Rescue Systems 1 (a basic rescue skills course). They also receive instruction in structural collapse patterns, hazard identification and building monitoring, rapid assessment of buildings, building triage and marking systems, advance shoring and shoring calculations.[9]

Tort Law - In General

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.[10] When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. Negligence is defined as the failure to use reasonable care. It means the care that a reasonably careful person would use under similar circumstances. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.[11]

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.[12]

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:
- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and
- Damages – That the plaintiff suffered actual harm or loss.

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence:

Slight Negligence
Slight negligence is generally defined to mean the failure to exercise a great amount of care.[13]

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[9] *See* US Army Corps of Engineers, *Urban Search and Rescue Program, Fact Sheet, supra* n. 1.
[10] BLACK'S LAW DICTIONARY (11th ed. 2019).
[11] Fla. Std. Jury Instr. Civil 401.3, *Negligence*.
[12] Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.
[13] Sawaya, Thomas, 6 Fla. Prac., *Personal Injury & Practice With Wrongful Death Actions* § 1:2 – *Degrees of Negligence* (2020-2021 ed.).

Ordinary Negligence

Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.[14]

Gross Negligence and Intentional Misconduct

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a "reasonably prudent person knows will probably and most likely result in injury to another" person.[15] In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:

- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.[16]

Intentional misconduct means that the defendant had actual knowledge of the wrongfulness of the conduct, that there was a high probability of injury or damage to the claimant and, despite that knowledge, the defendant intentionally pursued that course of conduct, resulting in injury or damage.[17]

Current Law Regarding Tort Liability for Emergency Action

Current law addresses some of the tort liability addressed in this bill. A licensed professional providing professional services during a declared emergency, where such services are related to the emergency, is not liable for professional malpractice so long as the professional acted as an ordinary reasonably prudent member of that profession would have acted under the same or similar circumstances.[18]

III. Effect of Proposed Changes:

The bill creates s. 768.30, F.S., to provide that an engineer, architect, or structures specialist is not liable for personal injury, wrongful death, property damages, or economic loss resulting from acts or omissions related to certain engineering or architectural services rendered on a volunteer basis during a state of emergency.

The bill gives tort immunity to a person who is one of the following:

- A Florida engineer, defined by reference to the definition of engineer in the state licensing law.
- An engineer licensed or registered outside of Florida "as a member of a mobile support unit of another state." The term "mobile support unit" is not defined in the bill. As related to this bill, the term generally refers to units or teams, sometimes affiliated with a state National

[14] *Id*.
[15] *Id.*
[16] *Id*. Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.
[17] Fla. Std. Jury Instr. 503.1, *Punitive Damages - Bifurcated Procedure*.
[18] Section 768.1345, F.S.

Guard, that travel to disaster sites as needed, including travel to other states, to aid in disaster response.[19]
- A Florida architect, defined by reference to the definition of architect in the state licensing law.
- An architect licensed or registered outside of Florida as a member of a mobile support unit of another state.
- A structures specialist, defined as a person who has been trained by and holds a current certification as a structures specialist from the United States Army Corps of Engineers.

The limitation on liability provided by the bill applies to an act or omission of an engineer, architect, or structures specialist in the performance of his or her services on a volunteer basis, when performed while under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency. However, the limitation on liability does not apply to an act or omission constituting gross negligence or willful misconduct. The limitation on liability only applies during a declared national, state, or local emergency, or within 90 days after the end of such emergency.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

[19] *See generally*, Connecticut ch. 517, s. 28-6; Indiana IC 10-14-3-19; Kansas s. 48-911; Nevada s. 414.037.

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 768.38 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 Regulated Industries on March 16, 2021:
The committee substitute narrows the liability protection granted to licensed engineers and architects who participate in emergency response activities and who provide professional services while under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency.

CS by Judiciary on March 2, 2021:
The committee substitute clarifies that architectural services are also covered by the liability protections in the bill, and clarifies the language regarding tort liability to remove unnecessary language.

B. Amendments:

None.

By the Committees on Regulated Industries; and Judiciary; and Senator Bradley

580-02950-21 20211060c2

A bill to be entitled

An act relating to limitation of liability for voluntary engineering or architectural services; creating s. 768.38, F.S.; defining the term "structures specialist"; exempting engineers, architects, and structures specialists from liability for certain voluntary engineering or architectural services under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Section 768.38, Florida Statutes, is created to read:

768.38 Limitation of liability for certain voluntary engineering or architectural services.—

(1) For the purposes of this section, the term "structures specialist" means a person who has been trained by, and holds a current certification from, the United States Army Corps of Engineers as a structures specialist.

(2) An engineer as defined in s. 471.005, an architect as defined in s. 481.203, or a structures specialist, and any qualified business organization of such person, who voluntarily participates in emergency response activities by providing engineering or architectural services while under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency in response to a declared federal, state, or local emergency, may

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

580-02950-21 20211060c2

not be held liable for any personal injury, wrongful death, property damage, or other economic loss related to his or her acts or omissions in the performance of his or her services, unless the act or omission constituted gross negligence or willful misconduct.

(3) The immunity from liability under this section also applies to any person who is licensed or registered as an engineer or architect in any other jurisdiction and who is rendering aid in this state as a member of a mobile support unit of another state.

(4) The immunity from liability under this section applies only to services provided during, or within 90 calendar days after the end of, a declared federal, state, or local emergency.

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 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 1060 be placed on the agenda for the Committee on Rules at your earliest convenience. The bill limits the liability of engineers, architects and structural specialist who provide voluntary services during a declared local, state, or federal disaster. According to the Florida Engineering Society, the state has lost one-third of its engineering support mechanisms for disaster recovery efforts due, in part, to their liability exposure. These voluntary services are critical to ensuring the safety of our citizens and our first responders following a disaster.

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

Sincerely,

Jennifer Bradley

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

April 16, 2021
Meeting Date

SB 1060
Bill Number (if applicable)

Topic Limitation of Liability for Voluntary Engineering or Architecural Services

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Job Title Executive Director

Address 5289 Palm Drive
Street

Phone 407-468-6622

Melbourne Beach FL 32951
City *State* *Zip*

Email ray@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1070
INTRODUCER:	Community Affairs Committee; Judiciary Committee; and Senator Berman
SUBJECT:	Estates and Trusts
DATE:	April 15, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Hackett	Ryon	CA	**Fav/CS**
3.	Bond	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1070 amends laws on the transfer of property through wills, probate, and trusts.

The bill creates a comprehensive statutory framework for the creation and operation of a directed trust. Directed trusts are authorized by current law. In a directed trust, someone other than a trustee is allowed to direct some actions of a trustee of the trust.

The bill creates a comprehensive statutory framework for the creation and operation of a community property trust. Community property trusts are not addressed in current law. A community property trust holds property owned by a married couple as if the property was in a community property state, which has certain tax and estate planning advantages.

The bill amends probate law to provide that, absent specific intent in the divorce judgment, an ex-spouse is not a beneficiary of the former spouse's will, regardless of when the will was signed. Currently, an ex-spouse remains as a beneficiary after divorce if the will was signed prior to the wedding and the deceased failed to change the will after divorce.

The bill also requires a probate court to allow a surety bond in lieu of a depository account requirement; provides that the limitations periods for an action against a trust's trustee apply to directors, officers, and employees of the trustee; and applies homestead property law applicable to wills to homestead property held in a decedent's revocable trust.

Portions of the bill relating to the effect of divorce and depository accounts are effective upon becoming law. The remainder of the bill is effective July 1, 2021.

II. Present Situation:

Trusts, In General

Chapter 736, F.S., contains the Florida Trust Code (Code). The Code applies to express trusts, charitable or noncharitable, and to trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.

Under the Code, a settlor is the person who creates or contributes property to a trust.[1] A beneficiary of a trust is a person who has a present or future beneficial interest in the trust.[2] A trustee is the person who holds the legal title to the property of the trust. The trustee is granted certain powers and is subject to certain duties imposed by the terms of the trust, equity jurisprudence, or by statute. A trustee may have the power or duty to perform various acts of management.

A trustee derives his or her rules of conduct, extent and limit of authority, and measure of obligation from the trust instrument. Under the Code, a violation by a trustee of a duty owed to a beneficiary is a breach of trust. A breach of trust makes the trustee liable for any loss of the trust estate.

Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of beneficiaries. The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S., which provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.[3]

One area of trust law that cannot be changed by the terms of a trust is the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. This becomes troublesome where the settlor wants to appoint someone other than a trustee to direct some part of the operation of the trust.

Directed Trusts

In a directed trust, the terms of the trust grant a person other than a trustee a power over some aspect of the trust's administration. There is no consistent vocabulary to describe the person other than a trustee that holds a power in a directed trust. Several terms are common in practice, including "trust protector," "trust adviser," and "trust director." There is much uncertainty in existing law about the fiduciary status of a nontrustee that has a power over a trust and about the fiduciary duty of a trustee, sometimes called an "administrative trustee" or "directed trustee," with regard to actions taken or directed by the nontrustee.

[1] Section 736.0103(18), F.S.
[2] Section 736.0103(4), F.S.
[3] Section 736.0105(2), F.S.

The concept of a directed trust is briefly addressed in current law at ss. 736.0703(9), and 736.0808, F.S. Those sections allow creation of a directed trust, provide for rights and duties between cotrustees, and provide that a trustee of a revocable trust may follow the direction of someone designated by the settlor unless that action would constitute a serious breach of trust. A person who holds a power to direct is considered a fiduciary.

Community Property Trust

The term "community property" refers to the legal theory, applicable in some states, that most property owned by a married person is jointly owned with the spouse. Nine states are considered "community property states."[4] Florida is not a community property state, but some residents come from community property states. Holding property as if community property law applies has certain advantages in divorce, tax avoidance, and estate planning. The Probate Code recognizes community property rights.[5]

Impact of Divorce on Wills and Trusts

One consequence of divorce is that is supposed to be the end of the benefits of marriage. One of the financial benefits of marriage is inheritance. Many persons who divorce neglect to change the terms of their wills, trusts, or other financial instruments, to omit their now former spouse as a beneficiary. This common omission, if not corrected by statue, can lead to unexpected windfalls for an ex-spouse years after divorce, to the detriment of the expected heirs of an estate (such as the current spouse, children, parents, and other family). Current law protects expected heirs from this oversight by creating the legal fiction that, for purposes of inheritance, revocable trusts, and certain beneficiary designations, a past divorce is treated in the distribution as if the surviving former spouse had died on the date of divorce.[6] This legal fiction does not apply where the divorce judgment specifically requires that the former spouse remain as a beneficiary of the will, trust, or other financial instrument, or where the beneficiary designation is reaffirmed after divorce.

A 2018 appellate case exposed an exception in this area. In that case, the decedent had signed his will prior to the wedding date. The statute on wills requires that the will be signed during the term of the marriage for the ex-spouse to be disinherited by the statute. A strict reading of the statute led to the ex-wife receiving an inheritance, to the detriment of the decedent's disabled father.[7]

Depository Accounts in Probate

Courts are commonly called on to assume control over a person's property. The most common form of this is probate, but other common areas include guardianship and receivership. The trial

[4] The nine states that have community-property systems: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Also, a community-property regime is elective in Alaska. Black's Law Dictionary (11th ed. 2019).
[5] Sections 732.216-.228, F.S., known as the Florida Uniform Disposition of Community Property Rights at Death Act.
[6] Sections 732.507 (wills), 732.703 (certain life insurance, IRAs, retirement plans, and pay on death accounts), and 736.1105 (trusts), F.S.
[7] *Gordon v. Fishman*, 253 So. 3d 1218 (Fla. 3d DCA 2018)

judge does not have the time or expertise to inventory, manage, and distribute such property, and so a fiduciary is appointed. These court-appointed fiduciaries are known by many names, including personal representative, guardian, curator, executor, administrator, trustee, or receiver. Current law provides numerous safeguards to guard against theft or mismanagement of property by a court-appointed fiduciary. A common safeguard is a requirement that a court-appointed fiduciary post a surety bond.

Surety bonds are expensive, and may not be available at any cost in large or complicated estates. Current law at s. 69.031, F.S., gives the court an alternative safeguard applicable to all court-appointed fiduciaries -- the use of a depository account. A depository account may be used where "the size of the bond . . . is burdensome or for other cause." Where a depository account is used, the property of the estate is deposited with a bank, trust company, or savings and loan. Court approval is required for every distribution from a depository account, a burdensome and costly process.

Probate practitioners report that some jurisdictions require use of a depository account pursuant to a blanket policy. A blanket policy requiring use of a depository account is improper.[8]

Liability of Directors, Officers and Employees

Section 736.1008, F.S., creates limitation periods for a beneficiary's claim against a trustee for a breach of trust. The trustee has the authority to adequately disclose matters in a trust disclosure document and include a limitations notice to use a 6-month statute of limitations. Where the appointed trustee is a business entity, employees of the trustee may be personally liable for a breach of trust.[9] It is unclear whether the limitations period for filing a lawsuit against a trustee similarly applies to directors, officers, or employees of the trustee.

Homestead Property in a Trust

The state constitution protects a homestead in three distinct ways. First, it provides homesteads with an exemption from property taxes. Second, the homestead provision protects the homestead from forced sale by creditors. Third, the homestead provision delineates the restrictions a homestead owner faces when attempting to alienate or devise the homestead property.[10] This bill involves the second and third protections.

When held by an individual, a homestead is protected from forced sale by creditors. Of course, this protection does not affect a tax or mortgage lien foreclosure. This protection extends to the heirs of such individual, so that the heirs inherit the homestead property without being subject to creditors of the deceased. It is unclear whether the same protection would apply to a specific devise of homestead property held in a trust. One court has ruled that it did not protect heirs receiving homestead property through a trust because the transfer from the individual to the trust

[8] *Goodstein v. Goodstein*, 263 So. 3d 78 (Fla. 4th DCA 2019).
[9] *Beaubien v. Cambridge Consol., Ltd.*, 652 So. 2d 936 (Fla. 5th DCA 1995).
[10] *Snyder v. Davis*, 699 So. 2d 999, 1001–02 (Fla. 1997).

caused the property to lose its homestead status.[11] Two appellate courts have held to contrary, finding that homestead property retained its status after transfer to a trust.[12]

The third part of the homestead benefits and limitations trio is related to devise of the property. The term "devise" refers to transfer of property by will. The Probate Code specifically provides that transfer by a trust is the same as a transfer will for purposes of limiting the devise of homestead property. This does not, however, appear in the Trust Code.

Also not appearing in the Trust Code are laws regarding the mechanics of the transfer of title and possession. In probate, title vests in the beneficiary at the moment of death.

It is common in probate proceedings to obtain a court order determining that property owned by the deceased was homestead property on the date of death. Once homestead is determined, the parties can go about the business of paying creditors and distributing property to heirs. A court order determining homestead status is required by title insurance in some circumstances. However, where the property was held in a revocable trust, there is no apparent authority for a court to determine that the trust property was homestead.

III. Effect of Proposed Changes:

Directed Trusts

The bill creates a comprehensive statutory framework for the governance of directed trusts. The bill repeals the brief references to directed trusts in current law. Current law is not changed, just greatly expanded and clarified.

The bill creates Part XIV of the Trust Code, ch. 736, F.S, entitled "Directed Trusts."

The bill creates s. 736.1403, F.S., to provide that Part XIV applies to a Florida-based trust, including one created before July 1, 2021, but only applies to a decision or action occurring on or after July 1, 2021. If a trust is moved to Florida on or after July 1, 2021, this part only applies to a decision or action taken after the move.

The bill creates s. 736.1405, F.S., to exclude certain persons or transactions from the part. Anyone who holds any power over a trust is subject to this part, so exceptions are required to limit its scope. A person who only holds any of the following powers is not subject to this part, unless specifically subject to this part under the terms of the trust:

- A power of appointment.
- A power to appoint or remove a trustee or trust director.
- Any power of the settlor over the trust while the trust is revocable.
- Any power of a beneficiary, but only to the extent such power only affects the beneficiary or benefits another beneficiary represented by the beneficiary.
- Any non-fiduciary power related to federal income tax planning.
- Any power to add or release a power benefitting the settlor for federal income tax purposes.

[11] *Elmowitz v. Estate of Zimmerman*, 647 So. 2d 1064 (Fla. 3rd DCA 1994).
[12] *HCA Gulf Coast Hosp. v. Estate of Downing*, 594 So. 2d 774 (Fla. 1st DCA 1991) (spendthrift trust); *Engelke v. Estate of Engelke*, 921 So. 2d 693 (Fla. 1st DCA 2006)(revocable trust).

For purposes of this section and as to a person other than a trustee of the trust:

- The power to designate a recipient of an ownership in the trust is a power of appointment.
- The power to terminate is a power of appointment.
- The power to create, modify, or terminate a power of appointment is a power of direction; unless it is a power to create a power of appointment that is an element of a broader power to affect an ownership interest in trust property beyond the mere creation of a power of appointment.

The bill creates s. 736.1406, F.S., to specify that the general power of a trust director is the power to do what the trust directs. In carrying out that responsibility, the trust director has the power to do anything appropriate to the exercise or non-exercise of such power of direction, subject to the limits of s. 736.1407, F.S. However, where there are two or more persons with the same power of direction, they must act by majority vote.

The bill creates s. 736.1407, F.S., to limit the powers of a trust director. A trust director must act as a trustee and comply with the requirements of a special needs trust under the federal Medicaid program,[13] and with the requirements of a charitable interest in the trust.

The bill creates s. 736.1408, F.S., to provide that the duty of a trust director is the same as the duty of a trustee as to that specific power. The terms of the trust may vary the duty or liability of a trust director, with the same limits that the duty and liability of a trustee may be modified.[14] A trust director who is licensed to practice health care and who furnishes health care services to a beneficiary is liable as provided in health care law and not liable under trust law. The terms of a trust may impose an additional duty or liability on a trust director.

The bill creates s. 736.1409, F.S., to provide the duties and liabilities of a directed trustee. In general, a directed trustee has the duty to reasonably comply with the direction of a trust director. However, a directed trustee is not required to comply with a direction that would constitute willful misconduct. A trustee is responsible for determining whether the trust director currently holds the power to direct the specific action or inaction. A direction to release a trustee or a trust director from liability is ineffective if the breach involved willful misconduct by a trustee or trust director, was induced by improper conduct, or the trust director did not know material facts. A directed trustee may apply to the court for instructions related to this section and the trust must pay the costs and fees. These are minimum requirements, the trust may impose additional duties and liabilities.

The bill creates s. 736.141, F.S., regarding duties to provide information. A trustee and a trust director each has a duty to one another to provide relevant information. Reasonable reliance on such information will not make one or the other liable for a breach of trust, absent willful misconduct. A trust director must provide information within the trust director's knowledge or control to a qualified beneficiary upon a written request of a qualified beneficiary, but only to the extent the information is reasonably related to the powers or duties of the trust director.

[13] 42 U.S.C. s. 1396p(d)(4)(A).

[14] Section 736.0105(2), F.S., lists 23 terms of a trust that are solely governed by the Trust Code and cannot be changed, waived, or otherwise altered by the terms of the trust.

The bill creates s. 736.1411, F.S., limiting duties. Unless provided differently in the trust, a trustee and a trust director have no duty to monitor each other, or to inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee or trust director might have acted differently than the other. Volunteering such information does not thereby create the duty.

The bill creates s. 736.1412, F.S., to allow for a co-trustee to act in the role as a trust director. In such case, the duties and liabilities are the same as those in the directed trustee and trust director roles. This new section is similar to current law at s. 736.0703(9), F.S., in effect.

The bill creates s. 736.1413, F.S., to provide that the limitations periods for an action against a trust director for breach of trust are the same as those applicable to a trustee. The bill creates s. 736.1414, F.S., to provide that a trust director has the same legal defenses as a trustee would in a like situation. The bill creates s. 736.1415, F.S., to provide that a trust director of a trust subject to this Part is subject to the jurisdiction of the state courts. The bill creates s. 736.1416, F.S., to provide that, except as provided in the terms of the trust, a trust director is treated as a trustee for 31 purposes.

If a person has not accepted a trust directorship, or if a trustee, settlor, or a qualified beneficiary of the trust is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified beneficiary of the trust may make a written demand on a person designated to serve as a trust director, with a written copy to the trustees, to accept or confirm prior acceptance of the trust directorship. The designated trust director must reply within 60 days after receipt.

The bill makes the following conforming changes to the Probate Code related to Directed Trusts:

Applicable to directed trusts, definitions for the Probate Code are amended by adding the following definitions:

- "Directed trust" means a trust which includes a power of direction.
- "Directed trustee" means a trustee subject to direction by a trust director.
- "Power of direction" means a power over a trust granted to a person by the trust terms that is exercisable by the person when not serving as a trustee.
- "Trust director" means a person who has a power of direction under the trust terms to the extent exercisable while that person is not a trustee.

The bill amends s. 736.0105, F.S., regarding requirements of the Trust Code that cannot be modified by the terms of a trust, to allow directed trusts. Specifically, a trustee's duty of good faith and duty to follow the terms of trust may be modified by a directed trust to provide that:

- A directed trustee may comply with a direction from a trust director, as required by s. 736.1409, F.S. (created by this bill).
- A directed trustee has no duty to monitor or supervise a trust director, as provided by s. 736.1411, F.S. (created by this bill).
- Where a co-trustee is given a power of direction, and whenever that co-trustee is exercising a power of direction, that co-trustee is treated as if he or she were a trust director and the

excluded trustee (one that must comply with the power of direction) is treated as if he or she were a directed trustee.

Section 736.1008, F.S., regarding limitations on actions against a trustee, is amended to additionally apply to actions against a trust director, and to actions against a director, officer or employee of a trustee or trust director.

Section 736.1017, F.S., regarding a certification of trust, is amended to include requirements applicable to a directed trust. That section currently lists disclosures regarding the trust that a trust can furnish to a third party rather than giving a copy of the trust. The bill adds the following required disclosures:

- Whether the trust includes a power of direction.
- Identity of current trust directors.
- The trustee powers subject to a power of direction.
- Whether a power of direction related to the proposed transaction has been used in relation to the transaction.

Current statutes on directed trusts, at ss. 736.0703(9) and 736.0808, F.S., are repealed.

Current statutes at ss. 736.0802, 736.08125, and 738.104, F.S., are amended to update cross-references.

Community Property Trusts

The bill creates Part XV of the Trust Code, ch. 736, F.S., entitled "Community Property Trust Act."

The bill creates s. 736.1502, F.S., to define terms applicable to the part:

- "Community property" means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property shall be deemed to be community property for purposes of general law.
- "Community property trust" means an express trust that complies with s. 736.1503, F.S., and is created on or after July 1, 2021.
- "Decree" means a judgment or other order of a court of competent jurisdiction.
- "Dissolution" means either termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or entry of a decree of legal separation maintenance.
- "During marriage" means a period that begins at marriage and ends upon the dissolution of marriage or upon the death of a spouse.
- "Qualified trustee" means either a natural person who is a resident of the state; or a company authorized to act as a trustee in the state.
- "Settlor spouses" means a married couple who establishes a community property trust pursuant to this part.

The bill creates s. 736.1503, F.S., to set the requirements for creation of a community property trust. To create a community property trust, the trust must:

- Expressly say that it is a community property trust.
- Appoint a qualified trustee.
- Be signed by both spouses. Most community property trusts will have testamentary effect, in which case the trust documents must follow existing trust and homestead law applicable to similar trusts, i.e., must be signed with the same formalities as a will.
- Contain this notice:

> THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY, THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND INDEPENDENT LEGAL ADVICE

The bill creates s. 736.1504, F.S., to set forth the terms of an agreement to create a community property trust. In the agreement, the spouses may:

- Determine rights and obligations regarding property in the trust.
- Describe management and control.
- Set forth the disposition of trust property upon dissolution, death, or other event.
- Declare whether the trust is revocable or irrevocable.
- Set any other lawful term of the trust which does not otherwise destroy the community property status of the property transferred to the trust.

A surviving spouse may amend the terms of a community property trust as to that spouse's half interest, even if the trust is otherwise irrevocable. During the lifetime of both, the spouses are the only qualified beneficiaries of the trust; and after the death of one, the surviving spouse is the only qualified beneficiary of his or her half. This applies whether the trust is revocable or irrevocable.

The bill creates s. 736.1505, F.S., creating miscellaneous provisions regarding a community property trust and property of the trust:

- The spouses may or may not be domiciled in the state.
- No consideration is required for creation of a community property trust.
- All property held by a community property trust is community property.
- Property distributed by a community property trust loses its characterization as community property unless a foreign law makes such property community property.

The bill creates s. 736.1506, F.S., to provide creditor rights in the assets of a community property trust. As to non-homestead property held by the trust, an obligation of one spouse may only be satisfied from that spouse's half, and an obligation of both may be satisfied from the trust.

The bill creates s. 736.1507, F.S., to provide for the death of spouse. Upon the death of a spouse:

- The surviving spouse's half of the trust is protected and is not counted as an asset of the decedent spouse's estate for purposes of the elective share.
- The decedent spouse's half of the trust is subject to probate unless it is protected as homestead property.
- The trustee has the discretion to determine which assets of the trust will be used for distribution to the heirs of the decedent spouse.

The bill creates s. 736.1508, F.S., to provide that a community property trust terminates upon dissolution of the marriage. Upon dissolution, trust assets are split evenly unless otherwise required by an agreement agreed to by both spouses. Section 61.075, F.S., which sets the default standards for distribution of assets in divorce, does not apply to assets held in a community property trust.

The bill creates s. 736.1509, F.S., to provide that the existence of a community property trust does not adversely the affect the right of a child of the settlor spouses to support that either would be legally required to pay. This section does not address support owed to a child of one of the spouses, thus that situation would be governed by s. 736.1506, F.S. (as created by this bill), which would allow legal attachment against the parental spouse's half interest.

The bill creates s. 736.151, F.S., to specify that homestead property transferred to a community property trust retains its homestead character. All three forms of homestead apply (property tax exemption including Save Our Homes, protection from creditors, and limitation on devise).

The bill creates s. 736.1511, F.S., to set out the interpretation and treatment of a community property trust under federal tax law. The bill provides that property in a community property trust is considered community property under Florida law for purposes of establishing the taxable basis under 26 U.S.C. s. 1014(b)(6). That federal law provides for calculation of the taxable basis in community property of the decedent as of the time of his or her death. Additionally, community property transferred from another state retains its character as community property while in a Florida community property trust. Property in a community property trust that is revoked only retains its character as community property in Florida if it otherwise would as foreign property under current probate law.[15]

The bill creates s. 736.1512, F.S., to make certain community property trusts unenforceable. A community property trust is unenforceable if:

- The terms were unconscionable when made;
- The spouse against whom enforcement is sought did not enter into the agreement voluntary; or
- The spouse against whom enforcement is sought did not receive fair and reasonable financial disclosure, did not waive disclosure, and did not have notice of the other spouse's finances.

[15] Current probate law as ss. 732.216 through 732.228, F.S., is the Florida Uniform Disposition of Community Property Rights at Death Act.

A community property trust is not unenforceable on the grounds that the spouses did not have separate counsel.

Impact of Divorce on Wills and Trusts

The bill amends the Probate Code at s. 732.507, F.S., to provide that a former spouse is considered, for estate purposes, to have died on the date of the divorce. The date the will was signed does not affect this legal fiction. The bill amends the Trust Code at s. 736.1105, F.S., to clarify the same result applies to a revocable trust. These changes apply to estates and trusts of decedents who die on or after the effective date of the bill, regardless of when the trust or will was signed. The effective date of the bill for purposes of the changes to these two sections is upon becoming law.

The similar statute on beneficiaries of certain other financial instruments is not modified by this bill as the same result is clear in the text.

Depository Accounts in Probate

The bill amends s. 69.031, F.S., to allow, in probate proceedings where the court has required a depository account, the personal representative of an estate, or other officer appointed to hold property of the estate, the option at any time to post a surety bond instead. The bond must be for value of the personal property, or other reasonable sum set by the probate court. The bill amends s. 744.3679, F.S., to conform. The change to depository accounts is effective upon becoming law.

Liability of Directors, Officers and Employees

The bill amends s. 736.1008, F.S., to provide that the limitations periods applicable to a trustee also apply to a claim against a director, officer, or employee of the trustee or trust director. Additionally, the limitations periods of that statute also apply to claims against a trust director and to a director, officer, or employee of a trust director.

Homestead Property in a Trust

The bill creates s. 736.1109, F.S., to create homestead protections in the Trust Code consistent with those applicable to the Probate Code and consistent with the state constitutional homestead protections. Accordingly, as to a revocable trust, or a trust with testamentary effect:

- Like in wills, if a trust tries to devise homestead in violation of the constitutional limits, the trust provision is void and the property is subject to the Probate Code statute regarding this violation of the homestead provision.[16]
- Like in wills, a general power of sale or general direction to pay debts in the trust instrument does not cause loss of the carry-over protection from forced sale by creditors.

[16] Section 732.401, F.S. Under that section, upon violation of the homestead limitation on devise, the property goes to the surviving spouse if there are no descendants. If there are surviving descendants, the surviving spouse gets a life estate in homestead and the remainder is distributed to the descendants. In lieu of a life estate, the surviving spouse may elect a 50 percent share in the property.

- Unlike wills, where a trust directs sale of property that would otherwise be protected homestead, title to the property remains in the name of the trustee.
- These provisions are "intended to clarify existing law" and thus apply retroactively and in the future.

The bill also amends s. 736.0201, F.S., a part of the trust law, to provide that a probate court may determine the homestead status of real property held in a revocable trust at the time of death.

Other Changes

The bill amends s. 736.0603, F.S., to add that the trustee of a revocable trust may follow the direction of the settlor that is contrary to the terms of the trust. This is subject to the statutory requirements of formality should the direction involve real property or testamentary disposition,[17] and the statutory requirement that a revocation be according to the terms of the trust.[18] This addition appears to reflect current law.

Portions of the bill relating to the effect of divorce and depository accounts are effective upon becoming law. The remainder of the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[17] Section 736.0403(2), F.S.
[18] Section 736.0602(3)(a), F.S.

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: 69.031, 732.507, 736.0103, 736.0105, 736.0201, 736.0603, 736.0703, 736.1008, 736.1017, 736.1105, 736.0802, 736.08125, 738.104, and 744.3679.

This bill creates the following sections of the Florida Statutes: 736.1109, 736.1401, 736.1416, 736.1403, 736.1405, 736.1406, 736.1407, 736.1408, 736.1409, 736.141, 736.1411, 736.1412, 736.1413, 736.1414, 736.1415, 736.1501, 736.1502, 736.1503, 736.1504, 736.1505, 736.1506, 736.1507, 736.1508, 736.1509, 736.151, 736.1511, and 736.1512.

This bill repeals section 736.0808, Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on March 30, 2021:
The committee substitute clarifies that certain claims are barred against employees acting for the trust director.

CS by Judiciary on March 22, 2021:
The portion of the bill regarding directed trusts was amended to add short descriptions for many of the cross-referenced statutes which may make that portion of the Trust Code easier for practitioners to use.

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 Community Affairs; and Judiciary; and Senator Berman

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A bill to be entitled

An act relating to estates and trusts; amending s. 69.031, F.S.; requiring the court to allow an officer to elect to post and maintain a certain bond; requiring the court to vacate or terminate an order under certain circumstances; making technical changes; amending s. 732.507, F.S.; providing that certain provisions of a will are void upon dissolution of marriage; specifying when dissolution of marriage occurs; providing applicability; amending s. 736.0103, F.S.; defining terms; revising the definition of the term "terms of a trust"; amending s. 736.0105, F.S.; revising the exceptions for when the terms of a trust do not prevail over provisions of the Florida Trust Code; amending s. 736.0201, F.S.; authorizing certain proceedings to determine the homestead status of real property owned by a trust to be filed in the probate proceeding for the settlor's estate; requiring that such proceedings be governed by the Florida Probate Rules; amending s. 736.0603, F.S.; transferring provisions that authorize a trustee to follow certain directions; amending s. 736.0703, F.S.; conforming provisions to changes made by the act; repealing s. 736.0808, F.S., relating to powers to direct; amending s. 736.1008, F.S.; specifying that certain claims barred against a trustee or trust director are also barred against certain persons acting for that trustee or trust director; conforming provisions to changes made by the act; amending s. 736.1017, F.S.; revising

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the information required to be included in a certification of trust; amending s. 736.1105, F.S.; revising the effects that subsequent marriages, births, adoptions, or dissolutions of marriage have on a revocable trust; providing construction; providing applicability; creating s. 736.1109, F.S.; specifying how title passes for certain devises of homesteads which violate the State Constitution; specifying that certain powers do not subject an interest in a protected homestead to certain claims; providing applicability; creating part XIV of ch. 736, F.S., entitled the "Florida Uniform Directed Trust Act"; creating s. 736.1401, F.S.; providing a short title; creating s. 736.1403, F.S.; providing applicability; providing for the validity of certain terms in a directed trust which designate principal places of administration; creating s. 736.1405, F.S.; defining the term "power of appointment"; providing applicability; specifying the types of powers granted to persons other than trustees; creating s. 736.1406, F.S.; authorizing the terms of a trust to grant a power of direction to a trust director; specifying the powers included in a power of direction; creating s. 736.1407, F.S.; providing for limitations on trust directors; creating s. 736.1408, F.S.; providing duties and liabilities for trust directors; creating s. 736.1409, F.S.; providing duties and liabilities for directed trustees; creating s. 736.141, F.S.; requiring a trustee to provide certain information to

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a trust director; requiring a trust director to provide certain information to a trustee or another trust director and a qualified beneficiary; providing that a trustee or a trust director acting in reliance on certain information is not liable for a breach of trust in certain circumstances; creating s. 736.1411, F.S.; specifying that trustees and trust directors do not have a duty to monitor, inform, or advise specified persons under certain circumstances; creating s. 736.1412, F.S.; transferring provisions relating to the appointment of trustees; creating s. 736.1413, F.S.; providing limitations on actions against trust directors; creating s. 736.1414, F.S.; authorizing trust directors to assert specified defenses in certain actions; creating s. 736.1415, F.S.; specifying that a trust director submits to specified personal jurisdiction by accepting appointment as a trust director; providing construction; creating s. 736.1416, F.S.; requiring trust directors to be considered a trustee for certain purposes; authorizing certain persons to make a specified written demand to accept or confirm prior acceptance of trust directorships; creating part XV of ch. 736, F.S., entitled the "Community Property Trust Act"; creating s. 736.1501, F.S.; providing a short title; creating s. 736.1502, F.S.; defining terms; creating s. 736.1503, F.S.; providing that an arrangement is a community property trust in certain circumstances; creating s. 736.1504, F.S.; authorizing

settlor spouses to agree upon certain terms in an agreement establishing a community property trust; specifying when a community property trust may be amended or revoked; specifying qualified beneficiaries of community property trusts; creating s. 736.1505, F.S.; providing that settlor spouses may classify any property as community property by transferring that property to a community property trust regardless of domicile; providing for enforceability and duration of a community property trust; providing that the right to manage and control certain property is determined by the terms of the trust agreement; providing the effect of distributions from a community property trust; creating s. 736.1506, F.S.; providing for the satisfaction of obligations incurred by one or both spouses from a community property trust; creating s. 736.1507, F.S.; providing for the disposition or distribution of certain property upon the death of a spouse; creating s. 736.1508, F.S.; providing for the termination of a community property trust upon dissolution of marriage; creating s. 736.1509, F.S.; providing that a community property trust does not adversely affect certain rights of a child; creating s. 736.151, F.S.; providing that certain property held in a community property trust qualifies as homestead property; creating s. 736.1511, F.S.; providing for the application of the Internal Revenue Code to a community property trust; creating s. 736.1512, F.S.; providing that a community property trust is not

enforceable in certain circumstances; amending ss. 736.0802, 736.08125, and 738.104, F.S.; conforming cross-references; amending s. 744.3679, F.S.; conforming a provision to changes made by the act; providing a directive to the Division of Law Revision; providing for severability; providing effective dates.

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

Section 1. Effective upon this act becoming a law, section 69.031, Florida Statutes, is amended to read:

69.031 Designated financial institutions for property ~~assets~~ in hands of guardians, curators, administrators, trustees, receivers, or other officers.—

(1) When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal property ~~assets~~ of the estate placed with a bank, trust company, or savings and loan association (which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state) designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer. Notwithstanding the foregoing, in probate proceedings and in accordance with s. 733.402, the court shall allow the officer at any time to elect to post and maintain bond for the value of the personal

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property, or such other reasonable amount determined by the court, whereupon the court shall vacate or terminate any order establishing the depository. When the property is ~~assets are~~ placed with the designated financial institution, it shall file a receipt therefor in the name of the estate and give the officer a copy. Such receipt shall acknowledge the property ~~assets~~ received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping, subject to the instructions of the officer authorized by order of the court directed to the financial institution.

(2) Accountings shall be made to the officer at reasonably frequent intervals. After the receipt for the original property ~~assets~~ has been filed by the financial institution, the court shall waive the bond given or to be given or reduce it so that it shall apply only to the estate remaining in the hands of the officer, whichever the court deems proper.

(3) When the court has ordered any property ~~assets~~ of an estate to be placed with a designated financial institution, any person or corporation having possession or control of any of the property ~~assets~~, or owing interest, dividends, principal or other debts on account thereof, shall pay and deliver such property ~~assets~~, interest, dividends, principal and other debts to the financial institution on its demand whether the officer has duly qualified or not, and the receipt of the financial institution relieves the person or corporation from further responsibility therefor.

(4) Any bank, trust company, or savings and loan

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association which is designated under this section, may accept or reject the designation in any instance, and shall file its acceptance or rejection with the court making the designation within 15 days after actual knowledge of the designation comes to the attention of the financial institution, and if the financial institution accepts, it shall be allowed a reasonable amount for its services and expenses which the court may allow as a charge against the property ~~assets~~ placed with the financial institution.

Section 2. Effective upon this act becoming a law, section 732.507, Florida Statutes, is amended to read:

732.507 Effect of subsequent marriage, birth, adoption, or dissolution of marriage.—

(1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit as set forth in ss. 732.301 and 732.302, regardless of the prior will.

(2) Any provision of a will ~~executed by a married person~~ that affects the testator's spouse is ~~of that person shall become~~ void upon dissolution of the marriage of the testator and the spouse, whether the marriage occurred before or after the execution of such will. Upon dissolution of marriage ~~the divorce of that person or upon the dissolution or annulment of the marriage. After the dissolution, divorce, or annulment~~, the will shall be ~~administered and~~ construed as if the ~~former~~ spouse ~~had~~ died at the time of the dissolution of marriage~~, divorce, or annulment of the marriage, unless the will or the dissolution or divorce judgment expressly provides otherwise~~.

(a) Dissolution of marriage occurs at the time the

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decedent's marriage is judicially dissolved or declared invalid by court order.

(b) This subsection does not invalidate a provision of a will:

1. Executed by the testator after the dissolution of the marriage;

2. If there is a specific intention to the contrary stated in the will; or

3. If the dissolution of marriage judgment expressly provides otherwise.

(3) This section applies to wills of decedents who die on or after the effective date of this section.

Section 3. Present subsections (6) through (13), (14) through (21), and (22) and (23) of section 736.0103, Florida Statutes, are redesignated as subsections (8) through (15), (17) through (24), and (26) and (27), respectively, new subsections (6), (7), and (16) and subsection (25) are added to that section, and present subsection (21) of that section is amended, to read:

736.0103 Definitions.—Unless the context otherwise requires, in this code:

(6) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

(7) "Directed trustee" means a trustee that is subject to a trust director's power of direction.

(16) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment,

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management, or distribution of trust property, a power to amend a trust instrument or terminate a trust, or a power over other matters of trust administration. The term excludes the powers excluded from part XIV of this chapter under s. 736.1405(2).

(24)~~(21)~~ "Terms of a trust" means:

(a) Except as otherwise provided in paragraph (b), the manifestation of the settlor's intent regarding a trust's provisions as:

1. Expressed in the trust instrument; or

2. Established by other evidence that would be admissible in a judicial proceeding; or

(b) The trust's provisions as established, determined, or amended by:

1. A trustee or trust director in accordance with applicable law;

2. Court order; or

3. A nonjudicial settlement agreement under s. 736.0111, relating to nonjudicial settlement agreements ~~the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding~~.

(25) "Trust director" means a person who is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

Section 4. Paragraph (b) of subsection (2) of section

736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(b) Subject to s. 736.1409, relating to the duties and liabilities of a directed trustee; s. 736.1411, relating to limitations on duties of a trustee or trust director to monitor, inform, or advise on matters involving the other; and s. 736.1412, relating to the allocation of powers among cotrustees, requirements for excluded cotrustees to act as a directed trustee, and liability and related obligations of directing cotrustees, the duty of the trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

Section 5. Subsection (1) of section 736.0201, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

736.0201 Role of court in trust proceedings.—

(1) Except as provided in subsections (5), ~~and~~ (6), and (7) and s. 736.0206, judicial proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Florida Rules of Civil Procedure.

(7) A proceeding to determine the homestead status of real property owned by a trust may be filed in the probate proceeding for the settlor's estate if the settlor was treated as the owner of the interest held in the trust under s. 732.4015. The proceeding shall be governed by the Florida Probate Rules.

Section 6. Subsection (3) is added to section 736.0603, Florida Statutes, to read:

736.0603 Settlor's powers; powers of withdrawal.—

(3) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a direction of the settlor that is contrary to the terms of the trust while a trust is revocable.

Section 7. Subsections (3), (7), and (9) of section 736.0703, Florida Statutes, are amended to read:

736.0703 Cotrustees.—

(3) Subject to s. 736.1412, relating to the allocation of powers among cotrustees, requirements for excluded cotrustees to act as a directed trustee, and liability and related obligations of directing cotrustees, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other provision of law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another cotrustee.

(7) Except as otherwise provided in s. 736.1412, relating to the allocation of powers among cotrustees, requirements for excluded cotrustees to act as a directed trustee, and liability and related obligations of directing cotrustees ~~subsection (9)~~, each cotrustee shall exercise reasonable care to:

(a) Prevent a cotrustee from committing a breach of trust.

(b) Compel a cotrustee to redress a breach of trust.

~~(9) If the terms of a trust provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power. Except in cases of willful misconduct on the part of the excluded~~

~~trustee, an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power. An excluded trustee does not have a duty or an obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power. The trustee or trustees having the power to direct or prevent actions of the excluded trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power. The provisions of s. 736.0808(2) do not apply if the person entrusted with the power to direct the actions of the excluded trustee is also a cotrustee.~~

Section 8. Section 736.0808, Florida Statutes, is repealed.

Section 9. Present subsection (7) of section 736.1008, Florida Statutes, is redesignated as subsection (8), a new subsection (7) is added to that section, and paragraph (a) of subsection (1), subsection (2), and paragraphs (a) and (c) of subsection (4) of that section are amended, to read:

736.1008 Limitations on proceedings against trustees.—

(1) Except as provided in subsection (2), all claims by a beneficiary against a trustee for breach of trust are barred as provided in chapter 95 as to:

(a) All matters adequately disclosed in a trust disclosure document issued by the trustee or a trust director, with the limitations period beginning on the date of receipt of adequate disclosure.

(2) Unless sooner barred by adjudication, consent, or

limitations, a beneficiary is barred from bringing an action against a trustee for breach of trust with respect to a matter that was adequately disclosed in a trust disclosure document unless a proceeding to assert the claim is commenced within 6 months after receipt from the trustee or a trust director of the trust disclosure document or a limitation notice that applies to that disclosure document, whichever is received later.

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

(a) "Trust disclosure document" means a trust accounting or any other written report of the trustee or a trust director. A trust disclosure document adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter.

(c) "Limitation notice" means a written statement of the trustee or a trust director that an action by a beneficiary ~~against the trustee~~ for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months after receipt of the trust disclosure document or receipt of a limitation notice that applies to that trust disclosure document, whichever is later. A limitation notice may but is not required to be in the following form: "An action for breach of trust based on matters disclosed in a trust accounting or other written report of the trustee or a trust director may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report. If you have questions, please consult your attorney."

(7) Any claim barred against a trustee or trust director

under this section is also barred against the directors, officers, and employees acting for the trustee or trust director.

Section 10. Present paragraphs (e), (f), and (g) of subsection (1) of section 736.1017, Florida Statutes, are redesignated as paragraphs (f), (g), and (h), respectively, and a new paragraph (e) is added to that subsection, to read:

736.1017 Certification of trust.—

(1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(e) Whether the trust contains any powers of direction, and if so, the identity of the current trust directors, the trustee powers subject to a power of direction, and whether the trust directors have directed or authorized the trustee to engage in the proposed transaction for which the certification of trust was issued.

Section 11. Effective upon this act becoming a law, section 736.1105, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 736.1105, F.S., for present text.)

736.1105 Effect of subsequent marriage, birth, adoption, or dissolution of marriage.—

(1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the revocable trust of any person.

(2) Any provision of a revocable trust that affects the settlor's spouse is void upon dissolution of the marriage of the settlor and the spouse, whether the marriage occurred before or

after the execution of such revocable trust. Upon dissolution of marriage, the revocable trust shall be construed as if the spouse had died at the time of the dissolution of marriage.

(a) Dissolution of marriage occurs at the time the decedent's marriage is judicially dissolved or declared invalid by court order.

(b) This subsection does not invalidate a provision of a revocable trust:

1. Executed by the settlor after the dissolution of the marriage;

2. If there is a specific intention to the contrary stated in the revocable trust; or

3. If the dissolution of marriage judgment expressly provides otherwise.

(3) This section applies to revocable trusts of decedents who die on or after the effective date of this section.

Section 12. Section 736.1109, Florida Statutes, is created to read:

736.1109 Testamentary and revocable trusts; homestead protections.—

(1) If a devise of homestead under a trust violates the limitations on the devise of homestead in s. 4(c), Art. X of the State Constitution, title shall pass as provided in s. 732.401 at the moment of death.

(2) A power of sale or general direction to pay debts, expenses and claims within the trust instrument does not subject an interest in the protected homestead to the claims of decedent's creditors, expenses of administration, and obligations of the decedent's estate as provided in s.

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736.05053.

(3) If a trust directs the sale of property that would otherwise qualify as protected homestead, and the property is not subject to the constitutional limitations on the devise of homestead under the State Constitution, title shall remain vested in the trustee and subject to the provisions of the trust.

(4) This section applies only to trusts described in s. 733.707(3) and to testamentary trusts.

(5) This section is intended to clarify existing law and applies to the administration of trusts and estates of decedents who die before, on, or after July 1, 2021.

Section 13. Part XIV of chapter 736, Florida Statutes, consisting of ss. 736.1401-736.1416, Florida Statutes, is created and entitled the "Florida Uniform Directed Trust Act."

Section 14. Section 736.1401, Florida Statutes, is created to read:

736.1401 Short title.—This part may be cited as the "Florida Uniform Directed Trust Act."

Section 15. Section 736.1403, Florida Statutes, is created to read:

736.1403 Application; principal place of administration.—

(1) This part applies to a trust subject to this chapter, whenever created, that has its principal place of administration in the state, subject to the following rules:

(a) If the trust was created before July 1, 2021, this part applies only to a decision or action occurring on or after July 1, 2021.

(b) If the principal place of administration of the trust

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is changed to the state on or after July 1, 2021, this part applies only to a decision or action occurring on or after the date of the change.

(2) In addition to s. 736.0108, relating to a trust's principal place of administration, in a directed trust, terms of the trust that designate the principal place of administration of the trust in the state are valid and controlling if a trust director's principal place of business is located in or a trust director is a resident of the state.

Section 16. Section 736.1405, Florida Statutes, is created to read:

736.1405 Exclusions.—

(1) As used in this section, the term "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(2) Unless the terms of a trust expressly provide otherwise by specific reference to this part, section, or paragraph, this part does not apply to:

(a) A power of appointment;

(b) A power to appoint or remove a trustee or trust director;

(c) A power of a settlor over a trust while the trust is revocable by that settlor;

(d) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

1. The beneficiary; or

2. Another beneficiary represented by the beneficiary under

ss. 736.0301-736.0305 with respect to the exercise or nonexercise of the power;

(e) A power over a trust if the terms of the trust provide that the power is held in a nonfiduciary capacity; and

1. The power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986, as amended, and regulations issued thereunder, as amended; or

2. It is a power to reimburse the settlor for all or a part of the settlor's income tax liabilities attributable to the income of the trust; or

(f) A power to add or to release a power under the trust instrument if the power subject to addition or release causes the settlor to be treated as the owner of all or any portion of the trust for federal income tax purposes.

(3) Unless the terms of a trust provide otherwise, a power granted to a person other than a trustee:

(a) To designate a recipient of an ownership interest in trust property, including a power to terminate a trust, is a power of appointment and not a power of direction.

(b) To create, modify, or terminate a power of appointment is a power of direction and not a power of appointment, except a power to create a power of appointment that is an element of a broader power to affect an ownership interest in trust property beyond the mere creation of a power of appointment, such as a power to appoint trust property in further trust, is a power of appointment and not a power of direction.

Section 17. Section 736.1406, Florida Statutes, is created to read:

736.1406 Power of trust director.—

(1) Subject to s. 736.1407, relating to trust directors being subject to the same rules as a trustee regarding Social Security Act reimbursement requirements and charitable trust instruments, the terms of a trust may grant a power of direction to a trust director.

(2) A power of direction includes only those powers granted by the terms of the trust.

(3) Unless the terms of a trust provide otherwise:

(a) A trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the trust director under subsection (1); and

(b) Trust directors with joint powers must act by majority decision.

Section 18. Section 736.1407, Florida Statutes, is created to read:

736.1407 Limitations on trust director.—A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under s. 736.1406(3)(a), relating to additional power granted to a trust director in furtherance of an express power of direction, regarding:

(1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of s. 1917 of the Social Security Act, 42 U.S.C. s. 1396p(d)(4)(A), as amended, and regulations issued thereunder, as amended.

(2) A charitable interest in the trust, including notice regarding the interest to the Attorney General.

Section 19. Section 736.1408, Florida Statutes, is created to read:

736.1408 Duty and liability of trust director.—

(1) Subject to subsection (2), with respect to a power of direction or further power under s. 736.1406(3)(a), relating to additional power granted to a trust director in furtherance of an express power of direction:

(a) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

1. If the power is held individually, as a sole trustee in a like position and under similar circumstances; or

2. If the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances.

(b) The terms of the trust may vary the trust director's duty or liability to the same extent the terms of the trust may vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this part to provide health care in the ordinary course of the trust director's business or practice of a profession, to the extent the trust director acts in that capacity the trust director has no duty or liability under this part.

(3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

Section 20. Section 736.1409, Florida Statutes, is created

to read:

736.1409 Duty and liability of directed trustee.—

(1) Subject to subsection (2), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under s. 736.1406(3)(a), relating to additional power granted to a trust director in furtherance of an express power of direction, and the trustee is not liable for such reasonable action.

(2) A directed trustee may not comply with a trust director's exercise or nonexercise of a power of direction or further power under s. 736.1406(3)(a), relating to additional power granted to a trust director in furtherance of an express power of direction, to the extent that by complying the trustee would engage in willful misconduct.

(3) Before complying with a trust director's exercise of a power of direction, the directed trustee shall determine whether or not the exercise is within the scope of the trust director's power of direction. The exercise of a power of direction is not outside the scope of a trust director's power of direction merely because the exercise constitutes or may constitute a breach of trust.

(4) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(a) The breach involved the trustee's or other director's willful misconduct;

(b) The release was induced by improper conduct of the trustee or other director in procuring the release; or

(c) At the time of the release, the trust director did not know the material facts relating to the breach.

(5) A directed trustee that has reasonable doubt about its duty under this section may apply to the court for instructions, with attorney fees and costs to be paid from assets of the trust as provided in this code.

(6) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this part.

Section 21. Section 736.141, Florida Statutes, is created to read:

736.141 Duty to provide information.—

(1) Subject to s. 736.1411, relating to limitations on the duties of trustees or trust directors to monitor, inform, or advise on matters involving the other, a trustee shall provide information to a trust director to the extent the information is reasonably related to the powers or duties of the trust director.

(2) Subject to s. 736.1411, relating to limitations on the duties of trustees or trust directors to monitor, inform, or advise on matters involving the other, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related to the powers or duties of the trustee or other trust director.

(3) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(4) A trust director that acts in reliance on information

provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

(5) A trust director shall provide information within the trust director's knowledge or control to a qualified beneficiary upon a written request of a qualified beneficiary to the extent the information is reasonably related to the powers or duties of the trust director.

Section 22. Section 736.1411, Florida Statutes, is created to read:

736.1411 No duty to monitor, inform, or advise.—

(1) Notwithstanding s. 736.1409(1), relating to the duty of a directed trustee to take reasonable action when directed and to the release of liability for such action, unless the terms of a trust provide otherwise:

(a) A trustee does not have a duty to:

1. Monitor a trust director; or

2. Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the trust director.

(b) By taking an action described in paragraph (a), a trustee does not assume the duty excluded by paragraph (a).

(2) Notwithstanding s. 736.1408(1), relating to the fiduciary duty of a trust director, unless the terms of a trust provide otherwise:

(a) A trust director does not have a duty to:

1. Monitor a trustee or another trust director; or

2. Inform or give advice to a settlor, beneficiary,

trustee, or another trust director concerning an instance in which the trust director might have acted differently than a trustee or another trust director.

(b) By taking an action described in paragraph (a), a trust director does not assume the duty excluded by paragraph (a).

Section 23. Section 736.1412, Florida Statutes, is created to read:

736.1412 Application to cotrustee.—

(1) The terms of a trust may provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees.

(2) The excluded trustees shall act in accordance with the exercise of the power in the manner, and with the same duty and liability, as directed trustees with respect to a trust director's power of direction under s. 736.1409, relating to the duties and liabilities of a directed trustee; s. 736.141, relating to the duties of a trustee and trust director to provide and rely on information; and s. 736.1411, relating to limitations on the duties of trustees or trust directors to monitor, inform, or advise on matters involving the other.

(3) The trustee or trustees having the power to direct or prevent actions of the excluded trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power.

Section 24. Section 736.1413, Florida Statutes, is created

to read:

736.1413 Limitation of action against trust director.—

(1) An action against a trust director for breach of trust must be commenced within the same limitation period for an action for breach of trust against a trustee in a like position and under similar circumstances under s. 736.1008, relating to limitations on proceedings against trustees.

(2) A trust accounting or any other written report of a trustee or a trust director has the same effect on the limitation period for an action against a trust director for breach of trust that such trust accounting or written report would have under s. 736.1008, relating to limitations on proceedings against trustees, in an action for breach of trust against a trustee in a like position and under similar circumstances.

Section 25. Section 736.1414, Florida Statutes, is created to read:

736.1414 Defenses in action against trust director.—In an action against a trust director for breach of trust, the trust director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

Section 26. Section 736.1415, Florida Statutes, is created to read:

736.1415 Jurisdiction over trust director.—

(1) By accepting appointment as a trust director of a trust subject to this part, the trust director submits to the personal jurisdiction of the courts of the state regarding any matter related to a power or duty of the trust director.

(2) This section does not preclude other methods of obtaining jurisdiction over a trust director.

Section 27. Section 736.1416, Florida Statutes, is created to read:

736.1416 Office of trust director.—

(1) Unless the terms of a trust provide otherwise, a trust director shall be considered a trustee for purposes of the following:

(a) Role of court in trust proceedings under s. 736.0201.

(b) Proceedings for review of employment of agents and review of compensation of trustee and employees of a trust under s. 736.0206.

(c) Representation by holder of power of appointment under s. 736.0302(4), relating to how trustees with discretionary power to make trust distributions do not have a power of appointment for purposes of representing persons affected by such power.

(d) Prohibition on a trustee acting as a designated representative under s. 736.0306(2).

(e) Validation of power to select a beneficiary from an indefinite class under s. 736.0402(3).

(f) As to allowing application by the trust director for judicial modification of a trust when such modification is not inconsistent with the settlor’s purpose under s. 736.04113, for judicial construction of provisions relating to federal taxes under s. 736.04114, for judicial modification of a trust when such modification is in the best interest of the beneficiaries under s. 736.04115, or for judicial modification or termination of an uneconomic trust under s. 736.0414(2), if the trust

director is so authorized by the terms of the trust.

(g) Discretionary trusts and the effect of a standard under s. 736.0504, relating to special provisions regarding discretionary trusts.

(h) Trust assets not being subject to creditor claims by reason of discretionary powers granted to a trustee under s. 736.0505(1)(c).

(i) A trustee's duty to pay trust obligations and expenses before paying obligations and expenses of the settlor's estate under s. 736.05053(4).

(j) Acceptance or declination of a trusteeship under s. 736.0701.

(k) Requirement to give bond to secure performance under certain circumstances and court discretions relating to such bonds under s. 736.0702.

(l) Filling trustee vacancies and court appointment of an additional trustee or special fiduciary under s. 736.0704.

(m) Resignation of a trustee under s. 736.0705, including requirements, court authorizations, and remaining liabilities.

(n) Court removal of a trustee, including who may request a removal, under s. 736.0706, but not to give the trust director the power to request removal of a trustee.

(o) Reasonable compensation of a trustee or professional acting as a trustee under s. 736.0708.

(p) Entitlement of a trustee to reimbursement of expenses and liens to secure advances under s. 736.0709.

(q) Authority to pay costs or attorney fees without approval under s. 736.0802(10), if the trust director has a power of direction or, if the trust director has a further power

to direct, the payment of such costs or attorney fees under s. 736.1406(2), relating to the explicit power of direction granted to a trust director, or s. 736.1406(3)(a), relating to the implied additional power of a director in furtherance of an express power of direction.

(r) Limitations on a trustee's discretionary powers under s. 736.0814.

(s) Administration of trusts by trustees without regard to pending contests or proceedings, except as the court directs, under s. 736.08165.

(t) A trustee's obligation to invest in accordance with chapter 518 under s. 736.0901.

(u) The exception to the prudent investor rule for life insurance under s. 736.0902.

(v) Remedies available for a trustee breach of trust under s. 736.1001.

(w) Damages against a trustee for breach of trust under s. 736.1002.

(x) A trustee's immunity from liability for loss or no profit under s. 736.1003 if there is no breach of trust.

(y) Court-awarded attorney fees and costs under s. 736.1004 for breach of trust challenges.

(z) Fees available to a trustee's attorney for extraordinary service under s. 736.1007(5), court variance of compensation for a trustee's attorney under s. 736.1007(6), and agreements between a settlor and an attorney for fees to be provided to a trustee under s. 736.1007(7).

(aa) A trustee's immunity from liability for a breach of trust under s. 736.1009 if the trustee relied on the trust

instrument terms.

(bb) Limitations on a trustee's liability for acting without knowledge of relevant events under s. 736.1010.

(cc) Limitations on a trustee's exculpation of liability under the terms of a trust under s. 736.1011.

(dd) The release of a trustee from liability with consent, the release or ratification of a beneficiary, and the limitations on such actions under s. 736.1012.

(ee) Limitations on imposing liability on a trustee for obligations of a settlor under s. 736.1014.

(2) If a person has not accepted a trust directorship under the terms of the trust or has accepted or declined a trusteeship under s. 736.0701 or a trustee, settlor, or a qualified beneficiary of the trust is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified beneficiary of the trust may make a written demand on a person designated to serve as a trust director, with a written copy to the trustees, to accept or confirm prior acceptance of the trust directorship in writing. A written acceptance, written acknowledgment of prior acceptance, or written declination of the trust directorship shall be delivered by the designated trust director within 60 days after receipt of such demand to all trustees, qualified beneficiaries, and the settlor if living.

Section 28. Part XV of chapter 736, Florida Statutes, consisting of ss. 736.1501-736.1512, Florida Statutes, is created and entitled the "Community Property Trust Act."

Section 29. Section 736.1501, Florida Statutes, is created to read:

736.1501 Short title.—This part may be cited as the

"Community Property Trust Act."

Section 30. Section 736.1502, Florida Statutes, is created to read:

736.1502 Definitions.—Unless the context otherwise requires, as used in this part:

(1) "Community property" means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property shall be deemed to be community property for purposes of general law.

(2) "Community property trust" means an express trust that complies with s. 736.1503 and is created on or after July 1, 2021.

(3) "Decree" means a judgment or other order of a court of competent jurisdiction.

(4) "Dissolution" means either:

(a) Termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or

(b) Entry of a decree of legal separation maintenance.

(5) "During marriage" means a period that begins at marriage and ends upon the dissolution of marriage or upon the death of a spouse.

(6) "Qualified trustee" means either:

(a) A natural person who is a resident of the state; or

(b) A company authorized to act as a trustee in the state.

A qualified trustee's powers include, but are not limited to,

maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust.

(7) "Settlor spouses" means a married couple who establishes a community property trust pursuant to this part.

Section 31. Section 736.1503, Florida Statutes, is created to read:

736.1503 Requirements for community property trust.—An arrangement is a community property trust if one or both settlor spouses transfer property to a trust that:

(1) Expressly declares that the trust is a community property trust within the meaning of this part.

(2) Has at least one trustee who is a qualified trustee, provided that both spouses or either spouse also may be a trustee.

(3) Is signed by both settlor spouses consistent with the formalities required for the execution of a trust under this chapter.

(4) Contains substantially the following language in capital letters at the beginning of the community property trust agreement:

THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY,

THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND INDEPENDENT LEGAL ADVICE.

Section 32. Section 736.1504, Florida Statutes, is created to read:

736.1504 Agreement establishing community property trust; amendments and revocation.—

(1) In the agreement establishing a community property trust, the settlor spouses may agree upon:

(a) The rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located.

(b) The management and control of the property transferred into the trust.

(c) The disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another event, subject to ss. 736.1507 and 736.1508.

(d) Whether the trust is revocable or irrevocable.

(e) Any other matter that affects the property transferred to the trust and does not violate public policy or general law imposing a criminal penalty, or result in the property not being treated as community property under the laws of any jurisdiction.

(2) In the event of the death of a settlor spouse, the surviving spouse may amend a community property trust regarding the disposition of that spouse's one-half share of the community property, regardless of whether the agreement provides that the

community property trust is irrevocable.

(3) A community property trust may be amended or revoked by the settlor spouses unless the agreement itself specifically provides that the community property trust is irrevocable.

(4) Notwithstanding any other provision of this code, the settlor spouses shall be deemed to be the only qualified beneficiaries of a community property trust until the death of one of the settlor spouses, regardless of whether the trust is revocable or irrevocable. After the death of one of the settlor spouses, the surviving spouse shall be deemed to be the only qualified beneficiary as to his or her share of the community property trust.

Section 33. Section 736.1505, Florida Statutes, is created to read:

736.1505 Classification of property as community property; enforcement; duration; management and control; effect of distributions.—

(1) Whether both, one, or neither is domiciled in the state, settlor spouses may classify any or all of their property as community property by transferring that property to a community property trust and providing in the trust that the property is community property pursuant to this part.

(2) A community property trust is enforceable without consideration.

(3) All property owned by a community property trust is community property under the laws of the state during the marriage of the settlor spouses.

(4) The right to manage and control property that is transferred to a community property trust is determined by the

terms of the trust agreement.

(5) When property is distributed from a community property trust, the property shall no longer constitute community property within the meaning of this part, provided that community property as classified by a jurisdiction other than the state retains its character as community property to the extent otherwise provided by ss. 732.216-732.228.

Section 34. Section 736.1506, Florida Statutes, is created to read:

736.1506 Satisfaction of obligations.—Except as provided in s. 4, Art. X of the State Constitution:

(1) An obligation incurred by only one spouse before or during the marriage may be satisfied from that spouse’s one-half share of a community property trust.

(2) An obligation incurred by both spouses during the marriage may be satisfied from a community property trust of the settlor spouses.

Section 35. Section 736.1507, Florida Statutes, is created to read:

736.1507 Death of a spouse.—Upon the death of a spouse, one-half of the aggregate value of the property held in a community property trust established by the settlor spouses reflects the share of the surviving spouse and is not subject to testamentary disposition by the decedent spouse or distribution under the laws of succession of the state. The other one-half of the value of that property reflects the share of the decedent spouse and is subject to testamentary disposition or distribution under the laws of succession of the state. Unless provided otherwise in the community property trust agreement,

the trustee has the power to distribute assets of the trust in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made on the basis of a non-pro rata division of the aggregate value of the trust assets, on the basis of a pro rata division of each individual asset, or by using both methods. The decedent's spouse's one-half share shall not be included in the elective estate.

Section 36. Section 736.1508, Florida Statutes, is created to read:

736.1508 Dissolution of marriage.—Upon the dissolution of the marriage of the settlor spouses, the community property trust shall terminate and the trustee shall distribute one-half of the trust assets to each spouse, with each spouse receiving one-half of each asset, unless otherwise agreed to in writing by both spouses. For purposes of this act, s. 61.075 does not apply to the disposition of the assets and liabilities held in a community property trust.

Section 37. Section 736.1509, Florida Statutes, is created to read:

736.1509 Right of child to support.—A community property trust does not adversely affect the right of a child of the settlor spouses to support that either spouse would be required to give under the applicable laws of the settlor spouses' state of domicile.

Section 38. Section 736.151, Florida Statutes, is created to read:

736.151 Homestead property.—

(1) Property that is transferred to or acquired subject to

a community property trust may continue to qualify or may initially qualify as the settlor spouses' homestead within the meaning of s. 4(a)(1), Art. X of the State Constitution and for all purposes of general law, provided that the property would qualify as the settlor spouses' homestead if title was held in one or both of the settlor spouses' individual names.

(2) The settlor spouses shall be deemed to have beneficial title in equity to the homestead property held subject to a community property trust for all purposes, including for purposes of s. 196.031.

Section 39. Section 736.1511, Florida Statutes, is created to read:

736.1511 Application of Internal Revenue Code; community property classified by another jurisdiction.—For purposes of the application of s. 1014(b)(6) of the Internal Revenue Code of 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a community property trust is considered a trust established under the community property laws of the state. Community property, as classified by a jurisdiction other than this state, which is transferred to a community property trust retains its character as community property while in the trust. If the trust is revoked and property is transferred on revocation of the trust, the community property as classified by a jurisdiction other than the state retains its character as community property to the extent otherwise provided by ss. 732.216-732.228.

Section 40. Section 736.1512, Florida Statutes, is created to read:

736.1512 Unenforceable trusts.—

(1) A community property trust executed during marriage is

not enforceable if the spouse against whom enforcement is sought proves that:

(a) The trust was unconscionable when made;

(b) The spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily; or

(c) Before execution of the community property trust agreement, the spouse against whom enforcement is sought:

1. Was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse.

2. Did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided.

3. Did not have notice of the property or financial obligations of the other spouse.

(2) Whether a community property trust is unconscionable shall be determined by a court as a matter of law.

(3) A community property trust may not be deemed unenforceable because the settlor spouses did not have separate legal representation when executing the trust.

Section 41. Paragraph (f) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)

(f)1. The trustee of a trust as defined in s. 731.201 may request authority to invest in investment instruments described in this subsection other than a qualified investment instrument, by providing to all qualified beneficiaries a written request containing the following:

a. The name, telephone number, street address, and mailing

address of the trustee and of any individuals who may be contacted for further information.

b. A statement that the investment or investments cannot be made without the consent of a majority of each class of the qualified beneficiaries.

c. A statement that, if a majority of each class of qualified beneficiaries consent, the trustee will have the right to make investments in investment instruments, as defined in s. 660.25(6), which are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, that such investment instruments may include investment instruments sold primarily to trust accounts, and that the trustee or its affiliate may receive fees in addition to the trustee's compensation for administering the trust.

d. A statement that the consent may be withdrawn prospectively at any time by written notice given by a majority of any class of the qualified beneficiaries.

A statement by the trustee is not delivered if the statement is accompanied by another written communication other than a written communication by the trustee that refers only to the statement.

2. For purposes of paragraph (e) and this paragraph:

a. "Majority of the qualified beneficiaries" means:

(I) If at the time the determination is made there are one or more beneficiaries as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s.~~

~~736.0103(16)(a)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, and at least a majority in interest of the beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class; or

(II) If there is no beneficiary as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ and at least a majority in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class.

b. "Qualified investment instrument" means a mutual fund, common trust fund, or money market fund described in and governed by s. 736.0816(3).

c. An irrevocable trust is created upon execution of the trust instrument. If a trust that was revocable when created thereafter becomes irrevocable, the irrevocable trust is created when the right of revocation terminates.

Section 42. Paragraph (a) of subsection (2) of section 736.08125, Florida Statutes, is amended to read:

736.08125 Protection of successor trustees.—

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

(a) "Eligible beneficiaries" means:

1. At the time the determination is made, if there are one or more beneficiaries as described in s. 736.0103(19)(c) s.

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

~~736.0103(16)(c)~~, the beneficiaries described in s. 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (c)~~; or

2. If there is no beneficiary as described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, the beneficiaries described in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

Section 43. Paragraph (d) of subsection (9) of section 738.104, Florida Statutes, is amended to read:

738.104 Trustee's power to adjust.—

(9)

(d) For purposes of subsection (8) and this subsection, the term:

1. "Eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, the beneficiaries described in s. 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (c)~~; or

b. If there is no beneficiary described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, the beneficiaries described in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

2. "Super majority of the eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means two-thirds in number of either such class; or

b. If there is no beneficiary described in s.

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

736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the interests of the beneficiaries are reasonably ascertainable, otherwise, two-thirds in number of either such class.

Section 44. Subsection (1) of section 744.3679, Florida Statutes, is amended to read:

744.3679 Simplified accounting procedures in certain cases.—

(1) In a guardianship of property, when all property ~~assets~~ of the estate is ~~are~~ in designated depositories under s. 69.031 and the only transactions that occur in that account are interest accrual, deposits from a settlement, or financial institution service charges, the guardian may elect to file an accounting consisting of:

(a) The original or a certified copy of the year-end statement of the ward's account from the financial institution; and

(b) A statement by the guardian under penalty of perjury that the guardian has custody and control of the ward's property as shown in the year-end statement.

Section 45. The Division of Law Revision is directed to replace the phrase "the effective date of this section" wherever it occurs in this act with the date those sections become law.

Section 46. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision

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

or application, and to this end the provisions of this act are severable.

Section 47. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.

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 30, 2021

I respectfully request that **Senate Bill #1070**, relating to Estates and Trusts, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

In brief, SB 1070 contains numerous provisions to clarify and update the Florida Probate and Trust Codes as recommended by the Real Property, Probate and Trust Law Section of the Florida Bar. The provisions of SB 1070 include changes necessitated by court rulings, statutory clarifications needed for consistency of estate administration and the enactment of uniform trust acts to give Florida consumers more certainty in the administration of trusts.

Senator Lori Berman
Florida Senate, District 31

CC: Senator Ileana Garcia, Vice Chair
John Phelps, Staff Director

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)

4/16/21
Meeting Date

SB 1070
Bill Number (if applicable)

Topic Estates and Trusts

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd, Ste 201
Street

Phone 850-509-8020

Tallahassee FL 32301
City *State* *Zip*

Email kpratt@floridabankers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/16/21
Meeting Date

1070
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Estates and Trusts (Rules)

Name Martha Edenfield

Job Title

Address 106 E. College Ave #1200
Street

Phone 850-999-4100

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

Email medenfield@deanmead.com

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.

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 1080
INTRODUCER:	Health Policy Committee; Regulated Industries Committee; and Senator Hutson
SUBJECT:	Tobacco and Nicotine Products
DATE:	April 15, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Looke	Brown	HP	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1080 relates to the regulation of the retail sale of tobacco products and nicotine products. The bill:

- Increases the minimum age to lawfully purchase and possess tobacco products and nicotine products from 18 years of age to 21 years of age.
- Creates a new part of ch. 569, F.S, to regulate the sale of, and create a separate licensing structure for, the sale of "nicotine dispensing devices" and nicotine products.
- Regulates tobacco products under part I of ch. 569, F.S., which consists of the current-law provisions.
- Regulates nicotine products under part II of ch. 569, F.S., which includes the requirements in current law for the sale of nicotine products, and additional provisions for the regulation of nicotine product sales the same as currently apply to the regulation of tobacco product sales.
- Excludes tobacco products from the definition of nicotine products.
- Requires retail dealers of nicotine products to have a permit issued by the Division of Alcoholic Beverages and Tobacco, but does not require a fee for the permit. However, the holder of a retail tobacco products dealer permit may sell nicotine products without an additional permit.
- Preempts to the state the establishment of a minimum age for purchasing or possessing tobacco or nicotine products as well as regulation of the marketing, sale, or delivery of tobacco or nicotine products.
- Prohibits smoking and vaping by any person under 21 years of age on or near school property. (Current law applies the prohibition to persons under 18 years of age).

- Keeps the exemption in current law for underage persons in the military and persons acting in the scope of lawful employment.
- Requires age verification before a sale or delivery of tobacco products to person who appear to be under 30 years of age. (This complies with federal law.)

The effective date of the bill is October 1, 2021.

II. Present Situation:

Regulation of Tobacco Products

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under ch. 569, F.S.

Tobacco Products Definitions

Section 569.002(6), F.S., defines the term "tobacco products" to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(12), F.S., provides a separate definition for the term "tobacco products" in the context of the taxation of these products and the licensing of tobacco product manufacturers, importers, exporters, distributing agents, or wholesale dealers under part II of ch. 210, F.S. In this context the term "tobacco products" means:

> loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

The definition of "tobacco products" in s. 569.002(6), F.S., is limited to the regulation of tobacco products by the division under ch. 569, F.S., and does not affect the taxation of such products under ch. 210, F.S.

Retail Tobacco Products Dealer Permits

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.[1] Section 569.003, F.S., relates to retail tobacco products dealer permits, the permit application, qualifications, fees, renewals, and duplicates. Section 569.003(2), F.S., stipulates that permits may only be issued to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older. The division is authorized to refuse to issue a permit to any person, firm, association, or corporation whose permit has been revoked; to any corporation with

[1] Section 569.003, F.S.

an officer who has had his or her permit revoked; or to any person who is or has been an officer of a corporation whose permit has been revoked.
The fee for an annual permit is established in rule by the division at an amount to cover the regulatory costs of the program, not to exceed $50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.[2]

Mail Order, Internet, Other Remote Sales of Tobacco Products, and Tobacco Products Permits

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, including age verification requirements, all of which is generally referred to as "delivery sales." It also defines 10 relevant terms.

Specific notice and shipping requirements are provided for all delivery sales, whether in-state or out-of-state. Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
  - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
  - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.[3]

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.[4] Before making sales or shipping orders, entities must provide specific notice to the division as to shipper and receiver, with monthly reporting.[5] There are requirements specific to purchase orders.[6]

Section 210.095(8), F.S., provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.

[2] Section 569.003(1)(c), F.S.
[3] Section 210.095(5), F.S.
[4] *Id.*
[5] Section 210.095(6), F.S.
[6] Section 210.095(7), F.S.

- A violation of any provision in s. 210.095, F.S., by an individual who is under 18 years of age.

Florida law does not provide a criminal penalty classification for a misdemeanor of the third degree. However, the prohibitions and second degree misdemeanor penalties[7] in s. 569.101, F.S., (prohibiting the sale, delivery, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any tobacco product, and s. 569.11, F.S., prohibiting persons under 18 years of age from possessing, directly or indirectly, any tobacco product) apply to s. 210.095, F.S., relating to the delivery of tobacco products to persons under the age of 18.

Section 210.15, F.S., relates to permits for the sale of specific tobacco products. A requirement for issuance of such a permit is for a person to be of good moral character and not less than 18 years of age. In addition, permits to corporations may be issued only to corporations whose officers are of good moral character and not less than 18 years of age.[8]

Signage Requirement

Retail tobacco products dealers must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailer dealers and must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.[9]

Annual Report

The DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 18 and the results of administrative hearings on such violations; and
- The number of people under the age of 18 cited for violations, including sanctions imposed as a result of such citation, related to misrepresenting their age, purchasing tobacco products underage, or misrepresenting military service for the purpose of obtaining tobacco products underage.[10]

Tobacco Products and Minors

Current law prohibits the sales of tobacco products to, and the possession of tobacco products by, person under the age of 18. Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing, or giving of tobacco products to persons under the age of 18. A violation of this

[7] Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[8] Section 210.15(2)(b), F.S.
[9] Section 569.14, F.S.
[10] Section 569.19, F.S.

prohibition is a second degree misdemeanor.[11] A second or subsequent violation within one year of the first violation is a first degree misdemeanor.[12]

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification[13] upon which the person relied in good faith.[14]

Section 569.11, F.S., prohibits persons under the age of 18 years from possessing, directly or indirectly, any tobacco products:

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second or subsequent violation within 12 weeks of the first violation is punishable with a $25 fine.

Any second or subsequent violation within the 12-week time period after the first violation is punishable as a first violation.[15]

Eighty percent of all civil penalties received by a county court under s. 569.11, F.S., must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training, and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.[16]

Section 569.002(7), F.S., provides that the term "any person under the age of 18" does not include any person under age 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

[11] *Supra* note 6.
[12] Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.
[13] Identification includes carefully checking "a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older." *See* s. 569.101(3)(c), F.S.
[14] Section 569.101(3)(c), F.S.
[15] Section 569.11(1), F.S.
[16] Section 569.11(6), F.S.

To prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lock-out device to allow the dispensing of one tobacco product;
- A mechanism on the lock-out device to prevent the machine from functioning if the power source for the lock-out device fails or if the lock-out device is disabled; and
- A mechanism to ensure that only one tobacco product is dispensed at a time.[17]

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on the premises and do not apply to the sale or delivery of cigars and pipe tobacco.[18]

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.12, F.S., provides enforcement authority to full-time, part-time, and auxiliary law enforcement officers for the provisions of ch. 569, F.S. The section also authorizes a county or municipality to designate certain of its employees or agents as tobacco product enforcement officers within specified guidelines. Such enforcement officers are authorized to issue a citation to a person under 18 years of age based on a reasonable cause to believe that a civil infraction has been committed. Similar authority is provided for correctional probation officers. Details are provided as to the required elements of the citation.

Retail tobacco products dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.[19]

Section 569.19, F.S., requires the division to annually provide to the Legislature and the Governor, by December 31, a progress report on its enforcement actions specific to the number and results of compliance visits, number of violations for failure of a retailer to hold a valid license, number of violations of selling tobacco products to persons under age 18, results of administrative hearings on these issues, and number of persons under age 18 cited for violations of underage purchases and sanctions imposed as a result of a citation.

Section 386.212, F.S., in the Florida Clean Indoor Air Act,[20] prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6:00 a.m. and midnight.[21] A violation of this prohibition

[17] Section 569.007(1), F.S.
[18] Section 569.007(2) and (3), F.S.
[19] Section 569.14, F.S.
[20] Part II of ch. 386, F.S.
[21] Section 386.212(1), F.S.

is punishable by a maximum noncriminal civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[22]

Administrative Penalties

A retail tobacco dealer permit-holder can be disciplined under the division's penalty guidelines. For a violation of the prohibition in s. 569.06, F.S., against the sale of tobacco products to persons under 18 years of age, the guidelines provide:

- 1st occurrence -- $500 fine.
- 2nd occurrence -- $1,000 fine.
- 3rd occurrence -- $2,000 fine and a 20-day suspension of the dealer permit.
- 4th occurrence -- revocation of the dealer permit.

These penalties are based on a single violation in which the permit-holder committed or knew about the violation; or a pattern of at least three violations on different dates within a 12-week period by employees, independent contractors, agents, or patrons on the licensed premises or in the scope of employment in which the permit-holder did not participate; or violations which were occurring in an open and notorious manner on the licensed premises.[23]

Section 569.008, F.S., provides a process for a retail tobacco products dealer to mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age.[24] The process encourages retail tobacco products dealers to comply with responsible practices. The division may mitigate penalties if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer's employees comply with ch. 569, F.S., such as employee training;
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; or
- The sale was made through a vending machine equipped with an operational lock-out device.[25]

Nicotine Dispensing Devices

Section 877.112, F.S., provides requirements for the sale of nicotine dispensing devices and nicotine products to minors, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age.

A license is not required to sell or offer for sale "nicotine dispensing devices" or "nicotine products."

[22] Section 386.212(3), F.S.
[23] Fla. Admin. Code R. 61A-2.022(1) (2019).
[24] The Florida Responsible Vendor Act in ss. 561.701 - 561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.
[25] Section 569.008(3), F.S.

A "nicotine dispensing device" is:

> any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.[26]

A "nicotine product" is:

> any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means. The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.[27]

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.[28] It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.[29]

Persons under 18 years of age possessing, purchasing, or misrepresenting their age or military service to obtain nicotine products or nicotine dispensing devices commit a noncriminal violation. The penalty is 16 hours of community service or a $25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second or subsequent violation within 12 weeks of the first violation requires a $25 fine. Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.[30]

If a person under 18 years of age is found by the court to have committed such a noncriminal violation and that person has failed to complete community service, pay the required fine, or attend a school-approved anti-tobacco and nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 or 45 consecutive days, depending on the infraction.[31]

Eighty percent of civil penalties specific to possession of nicotine products or nicotine dispensing devices by minors and misrepresenting age in making such purchases are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products,

[26] Section 877.112(1)(a), F.S.
[27] Section 877.112(1)(b), F.S.
[28] *Supra* note 5.
[29] Section 877.112(5), F.S.
[30] Sections 877.112(6) and (7), F.S.
[31] Section 877.112(8), F.S.

or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.[32]

Subsection 877.112(10), F.S., requires a retail dealer of nicotine products and nicotine dispensing devices to post signs that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited. This signage requirement is similar to the signs required for retail tobacco products dealers under s. 569.14, F.S.

Nicotine products or nicotine dispensing devices may not be sold or delivered by self-service merchandising, except when such products are under the direct control of, or in the line of sight where effective control may be reasonably maintained by, the retailer or their agent or employee.[33]

To prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, s. 877.112(12), F.S., requires retailers to comply with restrictions identical to the restrictions on the sale of tobacco products in s. 569.007(1), F.S., such as requiring the products to be sold or delivered only when under the direct control or line of sight of the retailer and requiring a lock-out device if the products are sold or delivered from a vending machine.

Regulation of Vaping

During the 2019 legislative session, CS/SB 7012[34] was enacted to implement Amendment 9 to the Florida Constitution,[35] which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces, as part of the Florida Clean Indoor Air Act. The use of e-cigarettes is commonly referred to as vaping.

The use of vapor-generating electronic devices is permitted in the enclosed indoor workplace of a "vapor-generating device retailer" or "retail vape shop," which is defined as "any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental." Vaping is permitted at the same locations authorized to permit tobacco smoking, i.e., private residences whenever not being used for certain commercial purposes, stand-alone bars, designated rooms in hotels and other public lodging establishments, retail tobacco shops, facilities owned or leased by a membership association, smoking cessation program locations, medical or scientific research locations, and customs smoking rooms in airport in-transit lounges.[36]

Local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.[37]

[32] Section 877.112(9), F.S.
[33] Section 877.112(11), F.S.
[34] *See* ch. 2019-14, Laws of Fla.
[35] FLA. CONST. art. X, s. 20.
[36] *See* ch. 386, part II, F.S.
[37] *Id.*

The above provisions were approved by the Governor and took effect July 1, 2019.

Unlike the retail sale of tobacco products, which is subject to regulation under ch. 569, F.S., the sale of vape products is only regulated under the provisions of s. 877.112, F.S. While tobacco products in Florida are subject to specific taxation under ch. 210, F.S., nicotine products are only subject to sales taxes.

Rates of Youth Vaping

According to Centers for Disease Control (CDC) latest National Youth Tobacco Surveys, electronic cigarettes (e-cigarettes) were the most commonly used tobacco product among high school (19.6 percent; 3.02 million) and middle school (4.7 percent; 550,000) students.[38] The CDC found that:

> From 2019 to 2020, decreases in current use of any tobacco product, any combustible tobacco product, multiple tobacco products, e-cigarettes, cigars, and smokeless tobacco occurred among high school and middle school students; these declines resulted in an estimated 1.73 million fewer current youth tobacco product users in 2020 than in 2019 (6.20 million) (*3*). From 2019 to 2020, no significant change occurred in the use of cigarettes, hookahs, pipe tobacco, or heated tobacco products. The comprehensive and sustained implementation of evidence-based tobacco control strategies at the national, state, and local levels, combined with tobacco product regulation by FDA, is warranted to help sustain this progress and to prevent and reduce all forms of tobacco product use among U.S. youths.[39]

The study found that use of e-cigarettes declined from 2019 to 2020, reversing previous trends. The declines were likely attributable to multiple factors at the national, state, and local levels. The report noted that "in December 2019, the federal minimum age of sale of all tobacco product types increased from 18 to 21 years.[40] The report indicated that the FDA issued guidance in January 2020 to prioritize enforcement against certain flavored e-cigarette products that appeal to youths, including mint and fruit flavors.[41] The FDA report further stated that "several states and communities also recently restricted the sale of flavored tobacco products, including e-cigarettes.[42]

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[38] Centers for Disease Control and Prevention, *Tobacco Product Use Among Middle and High School Students — United States, 2020, December 18, 2020, available at* Tobacco Product Use Among Middle and High School Students — United States, 2020 | MMWR (cdc.gov) (last visited March 16, 2021).
[39] *Id.*
[40] Food and Drug Administration, *Newly signed legislation raises federal minimum age of sale of tobacco products to 21*, 2019, *available at* https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21external icon (last visited March 16, 2021).
[41] FDA Center for Tobacco Products, *Enforcement priorities for Electronic Nicotine Delivery Systems (ENDS) and other deemed products on the market without premarket authorization (revised), available at* https://www.fda.gov/media/133880/download (last visited March 16, 2021).
[42] *See* Campaign for Tobacco Free Kids, *States & Localities that have Restricted the Sale of Flavored Tobacco Products, available at* 0398.pdf (tobaccofreekids.org) (last visited March 16, 2021).

Nearly 70 percent of e-cigarette users reported using a flavored product, and the availability of flavors such as mint and chocolate was a reason that many students cited for trying e-cigarettes. The findings came a year after the U.S. Surgeon General declared the surge in youth vaping an epidemic.[43]

Health Issues Relating to Vaping

The CDC is conducting an ongoing national investigation of vaping-related lung injuries. The CDC, the federal Food and Drug Administration (FDA), state and local health departments, and public health and clinical stakeholders have been investigating and monitoring the nationwide illness outbreak related to vaping. The condition has been labelled "E-cigarette, or Vaping, product use-Associated Lung Injury," or EVALI. AS of February 18, 2020, the CDC reports that 2,807 people have been hospitalized and 68 people have died across 29 states and Washington, D.C.[44] Two of the deaths have occurred in Florida, and 103 cases of vaping-related illness hospitalizations have been documented in Florida as of December 3, 2019.[45]

National Minimum Age of Sale of Tobacco Products

As part of the federal budget revisions adopted in December 2019 and signed into law on December 20, 2019, the federal minimum age for the sale of tobacco products was increased to 21 years of age.[46] The specific tobacco provisions in the budget amended section 906(d) of the Federal Food, Drug, and Cosmetic Act to increase the federal minimum age to purchase tobacco products from 18 to 21 years of age, and to prohibit retailers from selling tobacco products to any person younger than 21 years of age. The provisions also require the FDA to update its applicable tobacco regulations within specified timelines.

As part of the rule update process, the FDA must update the relevant age verification requirements to require age verification for individuals under age 30 (as opposed to the current age verification threshold for individuals under age 27).

U.S. Federal Food and Drug Administration Enforcement

The FDA has "deemed" ENDS products, i.e., vaping products, to be tobacco products.[47] A brief explanation of "deeming" is helpful in this context. The Family Smoking Prevention and

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[43] *See* "Surgeon General Warns Youth Vaping Is Now An 'Epidemic," December 18, 2018, *available at* https://www.npr.org/sections/health-shots/2018/12/18/677755266/surgeon-general-warns-youth-vaping-is-now-an-epidemic (last visited March 16, 2021).

[44] Centers for Disease Control and Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, *available at* https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (last visited March 16, 2021).

[45] *See* Naseem S. Miller, *Florida reports second vaping death*, Orlando Sentinel, Dec. 11, 2019, *available at* http://www.orlandosentinel.com/news/os-ne-florida-reports-second-vaping-death-20191211-dvz3tehxevbpvkcavhe2jdiepe-story.html (last visited March 16, 2021).

[46] *See* the "Further Consolidated Appropriations Act, 2020," Rules Committee print 116-44, Text of the House Amendment to the Senate Amendment to H.R. 1865, December 16, 2019, beginning at page 1492 of 1773, *available at* https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR1865SA-RCP116-44.PDF (last visited March 16, 2020).

[47] *See* 21 CFR 1100-1143. For all intents and purposes, "Electronic Nicotine Delivery Systems" or ENDS products is a reference to vaping products.

Tobacco Control Act (2009) (the act) authorized the FDA to regulate tobacco products. The act broadly defined "tobacco products" as any product that is "made or derived from tobacco" and that is "intended for human consumption." However, the act, when passed, immediately applied to a few products, namely cigarettes, cigarette tobacco, smokeless tobacco, and roll-your-own tobacco. To regulate any other tobacco products, the act requires the FDA to assert jurisdiction through regulation. In other words, for the FDA to start regulating cigars, e-cigarettes, hookah, and other products not regulated by the federal government, the FDA must create a rule through its formal notice-and-comment rulemaking process. A rule, or regulation, that extends the FDA's jurisdiction to all tobacco products is often referred to as a Deeming Regulation because the language of the act states that the FDA can regulate additional tobacco products that it "deems to be subject" to the act.[48]

New tobacco products may not be legally marketed in the United States without a tobacco product marketing order from the FDA, which evaluates based on the product's risks to the population as a whole. A "new tobacco product" is:

- Any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or
- Any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.[49]

The affected products include:

- Any flavored, cartridge-based ENDS product (other than a tobacco- or menthol-flavored ENDS product);
- All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors' access; and
- Any ENDS product that is targeted to minors or whose marketing is likely to promote use of ENDS by minors.[50]

There are three pathways to market for a person intending to market new tobacco products:

- A premarketing order issued by the FDA after submission of a premarket application;
- A finding by the FDA that the product is "substantial equivalent" to a "predicate" product and does not raise different questions of public health that the predicate product; and
- Receiving an exemption from demonstrating substantial equivalence.[51]

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[48] *See Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, available at* https://www.federalregister.gov/documents/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the (Feb. 26, 2021.) *See also* Tobacco Control Legal Consortium, *A Deeming Regulation: What is Possible Under the Law*, *available at* https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-deeming-reg-what-is-possible-2014.pdf (last visited March 16, 2021).

[49] Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §910(a)(1).

[50] *Supra*, note 48.

[51] FDA, *Market and Distribute a Tobacco Product*, *available at* https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product (last visited March 16, 2021).

New tobacco products commercially marketed after February 15, 2007, but before March 22, 2011, with a Substantial Equivalency Report submitted by March 22, 2011, are known as "provisional SE tobacco products" and may continue to be marketed unless FDA issues an order that the new product is not substantially equivalent.[52]

III. Effect of Proposed Changes:

The bill creates a separate licensing structure for the sale of "nicotine dispensing devices" and "nicotine products," by creating a new part of ch. 569, F.S., to regulate the sale of such products. Under the bill:

- Tobacco products would be regulated under part I of ch. 569, F.S., consisting of ss. 569.002 through 569.23, F.S., which comprise the current provisions in ch. 569, F.S.
- Nicotine products would be regulated under part II, consisting of ss. 569.31 through 569.45, F.S., which includes the requirements in current law for the sale of nicotine products, and additional provisions for regulating nicotine product sales the same as currently apply to the regulation of tobacco product sales.

The bill changes the title of ch. 569, F.S., from "Tobacco Products" to "Tobacco and Nicotine Products," and directs the Division of Law Revision to create parts I and II of ch. 569, F.S., entitled "Tobacco Products" and "Nicotine Products," respectively.

The bill preempts to the state the establishment of a minimum age for purchasing or possessing tobacco or nicotine products as well as regulation of the marketing, sale, or delivery of tobacco or nicotine products.

Tobacco Products

The bill increases the minimum age to lawfully purchase and possess tobacco products from 18 years of age to 21 years of age. It revises the minimum age requirements in the relevant provisions in ch. 210 and in ch. 569, F.S., including:

- Section 210.095(5), F.S., relating to mail order, Internet, and remote sales of tobacco products, and age verification related for such sales. The bill also requires the individual making a delivery of tobacco products to require the person accepting delivery to provide proof of their legal minimum purchase age if the individual appears to be under 30 years of age, rather than the current 27 years of age. (This latter provision is modified to ensure conformity with recent federal law provisions.)[53]
- Section 210.15 (1)(b), F.S., relating to the qualification for a person applying for a permit for the sale of tobacco products.
- Sections 569.007(1) and (2), F.S., relating to the prohibition on the sale or delivery of tobacco products to an underage person.
- Section 569.101, F.S., relating to the prohibition and penalties against the sale, delivery, barter, furnishing, or giving of tobacco products to an underage person.
- Section 569.11, F.S., relating to the prohibition on the possession of tobacco products by underage persons.

[52] *Id.*
[53] *Supra* note 47.

- Section 569.14, F.S., revising the signage requirements for dealers of tobacco products.

The bill revises the definition of the term "any person under the age of 18," to "any person under the age of 21" and deletes the exemptions for persons who have had the disability of nonage removed under ch. 743, F.S., and emancipated minors. Under the bill, the prohibitions against the sale of tobacco products to, and possession of tobacco products by, persons under 21 years of age would apply to such persons. Persons in the military reserve or active duty in the Armed Forces of the United States and persons acting within the scope of lawful employment, if under the age of 21, would not be prohibited from possessing or purchasing tobacco products.

The bill also amends ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree. The incorrect reference to a misdemeanor of the third degree is deleted.

Smoking and Vaping Near School Property

The bill amends s. 386.212, F.S., to increase the applicable age from 18 years of age to 21 years of age in the prohibition against smoking and vaping on or near school property during the hours of 6 a.m. to midnight and related penalties.

Nicotine Dispensing Devices and Nicotine Products

Definitions

The bill creates s. 569.31, F.S., to define the terms used in part II of ch. 569, F.S.

The bill defines the term "nicotine dispensing device" to mean "any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product."

The bill defines the term "nicotine product" to mean "any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means." The term "nicotine product" also includes any nicotine dispensing device.

Under the bill, the following products are not considered to be nicotine products:
- Tobacco products;
- Products regulated as a drug or device by the FDA; or
- Products that contain incidental nicotine.

The definitions of "nicotine dispensing device" and "nicotine product" in the bill are the same as the terms are currently defined in s. 877.112, F.S.

Section 569.31, F.S., defines the term "any person under the age of 21" to not include any person under the age of 21 who is:

- In the military reserve or on active duty in the Armed Forces of the United States; or
- Acting in his or her scope of lawful employment.[54]

Retail Nicotine Products Dealer Permits

The bill creates s. 569.32, F.S., to require persons who deal, at retail, in nicotine products or who allow a nicotine products vending machine to be located in their premises, to obtain a retail nicotine products dealer permit from the division. This permit does not allow for the sale of tobacco products. However, the holder of a retail tobacco products dealer permit may sell nicotine products without an additional permit.

The bill requires a person to obtain a retail nicotine products dealer permit for each place of business or the premises where nicotine products are to be sold face-to-face or through a vending machine, but no fee is provided for the permit. The division may only issue permits to persons who are 21 years or older or corporations with officers who are 21 years or older. The bill provides the place or premises covered by a permit is subject to inspection and search without a search warrant by the division, or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for nicotine sales and dealing.

The provisions for the issuance and renewal of a retail nicotine products dealer permit are comparable to the requirements for a retail tobacco products dealer permit. However, the bill does not require a retail dealer to pay a fee for a retail nicotine products dealer permit.

Section 569.33, F.S., provides that a retail nicotine products dealer, by accepting a permit, consents to the inspection and search of the place or premises covered by the permit without a warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with part II of ch. 569, F.S.[55]

Section 569.34, F.S., prohibits the dealing, at retail, of nicotine products. A person who violates this prohibition commits a noncriminal violation, punishable by a fine of not more than $500.[56] However, a retail tobacco products is dealer is not required to have a separate or additional permit to deal, at retail, in nicotine products.

Section 569.35, F.S., provides administrative penalties for a violation of the requirements in part II of ch. 569, F.S. Under the bill, the division may assess a fine of up to $1,000 for a violation. All fines collected must be deposited by the division into the General Revenue Fund. The division may also suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.[57]

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[54] *See* s. 569.002(9), F.S., as amended by the bill, providing a comparable provision for the retail tobacco products dealer permit.
[55] *See* s. 569.004, F.S., providing a comparable provision for the retail tobacco products dealer permit.
[56] *See* s. 569.005, F.S., providing a comparable provision, including the same penalty, for the retail tobacco products dealer permit.
[57] *See* s. 569.006, F.S., providing a comparable provision for the retail tobacco products dealer permit.

Section 569.39, F.S., authorizes the division to adopt rules to administer part II of ch. 569, F.S.

Nicotine Products and Persons Under the Age of 21

The bill repeals s. 877.112, F.S., which currently regulates the retail sale nicotine products in this state, including the sale of such products to, and possession by, minors. The requirements of s. 877.112, F.S., are incorporated into part II of ch. 569, F.S., and revised to increase the minimum lawful age to 21 from 18 years of age as follows:

- Section 569.37, F.S., requires sales and deliveries of nicotine products to be under the direct control or line of sight of the dealer or the dealer's agent or employee. If the sale or delivery is made through a vending machine, the vending machine must be equipped with an operational lockout device that is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product. The bill also prohibits sales by means of self-merchandising, which is an open display of products providing the consumer with direct access to nicotine products. However, self-merchandising is permitted if the establishment prohibits persons under 21 years of age on the licensed premises.[58]
- Section 569.41(1), F.S., prohibits the sale, delivery, barter, furnishing, or giving (sale or delivery) of nicotine products to underage persons;[59]
- Section 569.41(2), F.S., provides criminal penalties for the sale or delivery of nicotine products to underage persons of a misdemeanor of the second degree for a first violation and a misdemeanor of the first degree for second of subsequent violation within one year of the first violation.[60]
- Section 569.41(3), F.S., provides the following affirmative defenses for a person charged with such a violation:[61]
  - The buyer falsely represented that he or she was 21 years of age or older;
  - The appearance of the buyer would indicate, to a prudent person, that the buyer was 21 years of age or older; and
  - The person carefully checked a driver license or identification card and acted in good faith in reliance upon the representation and appearance of the buyer or recipient in the belief the buyer or recipient of 21 years of age or older.
- Section 569.38, F.S., prohibits the gifting of nicotine product samples to underage persons;[62]
- Sections 569.42(1) through (5), F.S., prohibit the knowing possession of nicotine products by persons under the lawful minimum age, prohibiting the misrepresentation of age or military service for the purpose of inducing a dealer or an agent or servant of a dealer to sell or deliver any nicotine product, and providing that any person who violates such prohibitions commits a non-criminal violation, punishable as follows:
  - A first violation carries a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco and anti-nicotine program, if locally available.
  - A second violation within 12 weeks of the first violation is punishable with a $25 fine.

[58] *See* ss. 877.112(11) and (12), F.S.
[59] *See* s. 877.112(2), F.S.
[60] *See* s. 877.112(4), F.S.
[61] *See* s. 877.112(5), F.S.
[62] *See* s. 877.112(3), F.S.

    - A court may suspend or withhold issuance of a driver's license for persons under 21 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase nicotine products.[63]
- Section 569.42(6), F.S., requires 80 percent of all civil penalties received from violating prohibitions related to the possession or sale of nicotine products by a county court to be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of nicotine products and nicotine products by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.[64]
- Section 569.43, F.S., requires nicotine product retailers to post a clear and conspicuous sign that the sale of nicotine products is prohibited to persons under the age of 21 and that proof of age is required for purchase.[65]

The bill creates s. 569.381, to provide a process to encourage a retail nicotine products dealer to comply with responsible practices to prevent the sale of nicotine products to persons under 21 years of age. This process is the same as is currently provided in s. 569.008, F.S., for retail tobacco product dealers. Under the bill, if the division finds that a retail nicotine products retailer's employee has illegally sold nicotine products to a person under 21 years of age, the division may mitigate penalties if:

- The nicotine product retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the nicotine product retailer's employees comply with Florida laws regulating the sale of nicotine products, such as employee training;
- The nicotine product retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; and
- If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Annual Report

Section 569.44, F.S., requires the division to submit an annual report, by December 31, to the Governor and Legislature on the progress of implementing and enforcing the above requirements, including:

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid permit;
- The number of violations for selling nicotine products to anyone under the age of 21 and the results of administrative hearings on such violations; and
- The number of people under the age of 21 cited, including sanctions imposed as a result of such citation.[66]

[63] *See* ss. 877.112(6), (7), and (8), F.S.
[64] *See* s. 877.112(9), F.S.
[65] *See* s. 877.112(10), F.S.
[66] *See* s. 569.19, F.S., providing a comparable provision for the retail tobacco products dealer permit.

Mail Order, Internet, and Other Remote Sales of Nicotine Products in Florida

Section 569.45, F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of nicotine products, referred to as "delivery sales."[67] Under the bill, each person who mails, ships, or otherwise delivers nicotine products in connection with an order for a delivery sale must:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Nicotine Products: Florida law prohibits shipping to individuals under 21 years of age."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
  - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 30 years of age.
  - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

Before the first delivery to a consumer, the bill requires the person mailing, shipping, or delivering the nicotine products to:

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting the delivery is an adult, and a written statement under penalty of perjury providing the person's date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person's ID;
- Provide the person accepting the delivery a notice stating nicotine products are illegal for underage youths and sales of such products are restricted to individuals who provide verifiable proof of legal age to purchase;
- Receive payment by a credit card or debit card in the name of the person accepting the delivery or a personal or company check of the person accepting the delivery, if the order is made in accordance with an advertisement on the Internet;
- Submit to the credit card company necessary information so that the words "nicotine product" appear on the person's credit card statement when a purchase is made using a credit card; and
- Make a phone call to the person accepting the delivery to confirm the order before shipping the order.

The bill requires a person who accepts a purchase order for a delivery sale and delivers the nicotine products without using a delivery service to comply with all of the delivery service requirements.

[67] *See* s. 210.095, F.S., providing comparable provisions for delivery sales of tobacco products.

The bill imposes a penalty for knowingly violating the delivery sale requirements as a misdemeanor of the second degree.[68]

Effective Date

The effective date of the bill is 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:

Article VII, Section 19 of the State Constitution requires a "state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject." A "fee" is defined by the State Constitution to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."

Article VII, Section 19 of the State Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

Under the bill, a fee for a retail nicotine products dealer permit is not imposed.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[68] *Supra*, note 6.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) may incur indeterminate expenses related to personnel costs or modification of operational priorities needed to accommodate the additional licensure of dealers of vapor-generating electronic devices, which will not be offset by a permit fee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Age of Tobacco Purchase in Other States

As of January 1, 2021, 31 states have raised the tobacco purchase age to 21 years of age, along with Washington, DC, and over 500 localities.[69] In Florida, Alachua County and the City of Fort Lauderdale have raised their minimum age for purchase of tobacco products to 21 years of age.[70]

Age Restrictions on Youth Access to Electronic Cigarettes in Other States

As of December 15, 2020, all states and the District of Columbia have laws that restrict youth access to electronic cigarettes, or e-cigarettes. In this context, *e-cigarette* broadly refers to any product, and its component parts and accessories, that contains nicotine and/or other substances intended for use in the form of an aerosol, often referred to as vapor. In 32 states, the restriction is set at age 21. Two states set the restriction at age 19. In 16 states, the restriction is set at age 18. There are certain exceptions and exemptions that are applicable within any given state.[71]

The bill amends s. 569.002(6), F.S., to modify the definition of "tobacco products" in the context of the regulation of the retail sale of tobacco products. Section 210.25(11), F.S., relating to the taxation of on tobacco products other than cigarettes or cigars, also defines the term "tobacco products." Because the bill does not revise the definition of "tobacco products" in part II ch. 210, F.S., which governs the excise tax and surcharge imposed and collected on tobacco products other than cigars and cigarettes, the bill does not affect:

- The taxation of vapor-generating electronic devices;

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[69] *See* Campaign for Tobacco-Free Kids, *States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21, available at* https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (last visited March 16, 2021).

[70] *Id.*

[71] *See* Public Health Law Center at Mitchell Hamline School of Law, "Youth Access to E-Cigarettes, States with Laws Restricting Youth Access to E-Cigarettes, Enacted as of December 15, 2020," *available at* https://www.publichealthlawcenter.org/sites/default/files/States-with-Laws-Restricting-Youth-Access-to-ECigarettes-Dec2020.pdf (last visited March 16, 2021).

- The collection of excise taxes and surcharge taxes on other tobacco products; or
- The licensure, reporting, and recordkeeping of manufacturers and distributors of vapor-generating electronic devices or other tobacco products.

Types of Nicotine Devices Subject to Federal Enforcement Priorities

The nicotine devices that are subject to enhanced enforcement by the FDA are cartridge-based nicotine devices. Tank-based vaping devices will not be subject to enhanced federal FDA enforcement.[72]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.095, 210.15, 386.212, 569.002, 569.003, 569.004, 569.006, 569.007, 569.0075, 569.008, 569.009, 569.101, 569.11, 569.12, 569.14, and 569.19.

This bill creates the following sections of the Florida Statutes: 569.0025, 569.31, 569.315, 569.32, 569.33, 569.34, 569.35, 569.37, 569.38, 569.381, 569.39, 567.41, 569.42, 569.43, 569.44, and 569.45.

This bill repeals section 877.112 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 Health Policy on March 24, 2021:
The committee substitute creates ss. 569.0025 and 569.315, F.S., to preempt to the state the establishment of a minimum age for purchasing or possessing tobacco or nicotine products as well as regulation of the marketing, sale, or delivery of tobacco or nicotine products.

CS by Regulated Industries on March 9, 2021:
The committee substitute:

- Creates a separate licensing structure for the sale of "nicotine dispensing devices" and nicotine products, by creating a new part II in ch. 569, F.S., to regulate the sale of such products.
- Regulates tobacco products under part I consisting of ss. 569.002 through 569.23, F.S., which consists of the current law provisions.
- Regulates nicotine products under part II, consisting of ss. 569.31 through 569.45, F.S., which includes the requirements in current law for the sale of nicotine products and additional provisions for the regulation of nicotine product sales the same as currently apply to the regulation of tobacco product sales.
- Does not define the term tobacco products to include nicotine products.

[72] *Supra* note 48.

- Defines the term "nicotine dispensing device" and the term "vapor-generating electronic device."
- Requires nicotine products retail dealers to have a permit issued by the Division of Alcoholic Beverages and Tobacco, but does not require a fee.
- Retains the exemption in the definition for "any person under the age of 21" for underage persons in the military and persons acting in the scope of lawful employment.
- Revises the prohibition against smoking and vaping on or near school property to apply to persons under 21 years, and does not apply the prohibition to all hours of the day.
- Amends ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree, and deleting the incorrect reference to a misdemeanor of the third degree.
- Does not amend s. 569.007(1), F.S., to provide that sales of tobacco products from a vending machine are only permissible from a machine that is located in an establishment that prohibits persons under age 21 on the licensed premises at all times.
- Removes the provision in the bill limiting the sale of tobacco products through vending machines to a location that prohibit persons under 21 years of age on the premises.
- Does not create s. 569.101(4), F.S., to require a person to verify that a person purchasing a tobacco product is not under 21 years of age, and specify the type of documentation that may be used to verify age.
- Makes several technical and conforming changes to the 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.

By the Committees on Health Policy; and Regulated Industries; and Senator Hutson

588-03328-21 20211080c2

A bill to be entitled

An act relating to tobacco and nicotine products; amending s. 210.095, F.S.; deleting the definition of the term "adult"; revising age limitations relating to mail order, Internet, and remote sales of tobacco products; amending s. 210.15, F.S.; requiring permits to be issued to persons or corporations whose officers are not under 21 years of age; amending s. 386.212, F.S.; providing that it is unlawful for persons under 21 years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school during specified hours; renaming ch. 569, F.S.; providing directives to the Division of Law Revision; amending s. 569.002, F.S.; defining the terms "nicotine product" and "nicotine dispensing device"; conforming provisions to changes made by the act; creating s. 569.0025, F.S.; preempting the establishment of the minimum age for purchasing and possessing, and the regulation for the marketing, sale, or delivery of, tobacco products to the state; amending ss. 569.003, 569.004, and 569.006, F.S.; conforming provisions to changes made by the act; amending s. 569.007, F.S.; revising age limitations relating to the sale and delivery of tobacco products; revising applicability; amending s. 569.0075, F.S.; revising age limitations relating to gifting sample tobacco products; amending s. 569.008, F.S.; revising legislative intent; revising qualification

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588-03328-21 20211080c2

requirements for responsible retail tobacco products dealers; conforming provisions to changes made by the act; amending s. 569.009, F.S.; conforming a provision to changes made by the act; amending s. 569.101, F.S.; revising age limitations relating to selling, delivering, bartering, furnishing, or giving tobacco products to certain persons; amending s. 569.11, F.S.; revising age limitations relating to possessing and obtaining tobacco products; amending s. 569.12, F.S.; expanding the authority of tobacco product enforcement officers to include nicotine products; amending s. 569.14, F.S.; revising requirements for signage relating to tobacco products, nicotine products, and nicotine dispensing devices; conforming provisions to changes made by the act; amending s. 569.19, F.S.; conforming provisions to changes made by the act; creating s. 569.31, F.S.; defining terms; creating s. 569.315, F.S.; preempting the establishment of the minimum age for purchasing and possessing, and the regulation for the marketing, sale, or delivery of, nicotine products to the state; creating s. 569.32, F.S.; requiring retail nicotine product dealers to acquire a permit; providing requirements and authorizations for such permit; creating s. 569.33, F.S.; specifying that an applicant for a retail nicotine products dealer permit consents to certain inspections and searches upon accepting such permit; creating s. 569.34, F.S.; prohibiting certain persons, firms, associations, or corporations from operating

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without a permit; providing civil penalties; creating s. 569.35, F.S.; providing administrative penalties for retail nicotine product dealers under certain circumstances; requiring the Division of Alcoholic Beverages and Tobacco to deposit funds collected from administrative fines into the General Revenue Fund; creating s. 569.37, F.S.; providing restrictions on the sale or delivery of nicotine products; creating s. 569.38, F.S.; prohibiting certain persons from gifting sample nicotine products to persons under a specified age; creating s. 569.381, F.S.; providing legislative intent; providing requirements for a dealer to qualify as a responsible retail nicotine products dealer; authorizing the division to mitigate certain penalties; requiring the division to develop and make available a nicotine products training program; requiring dealers to exercise diligence in the management and supervision of their premises and the supervision and training of certain persons; creating s. 569.39, F.S.; requiring the division to adopt rules; creating ss. 569.41 and 569.42, F.S.; providing civil and criminal penalties relating to selling, delivering, bartering, furnishing, or giving nicotine products to certain persons and possessing and acquiring nicotine products, respectively; creating s. 569.43, F.S.; providing signage requirements relating to the sale of nicotine products or nicotine dispensing devices; providing criminal penalties; creating s. 569.44, F.S.; requiring the division to

provide an annual report containing specified information to the Governor and the Legislature; creating s. 569.45, F.S.; defining terms; providing requirements for mail order, Internet, and remote sales of nicotine products; providing applicability; providing criminal penalties; repealing s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1), paragraphs (a) and (c) of subsection (2), paragraph (a) of subsection (3), paragraph (a) of subsection (4), paragraphs (a) and (b) of subsection (5), and paragraphs (a), (b), (e), and (g) of subsection (8) of section 210.095, Florida Statutes, are amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

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

~~(a) "Adult" means an individual who is at least of the legal minimum purchase age for tobacco products.~~

(2)

(a) A sale of tobacco products constituting a delivery sale pursuant to paragraph (1)(b) ~~(1)(c)~~ is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside this state.

(c) A person may not make a delivery sale of tobacco products to any individual who is not 21 years of age or older

~~an adult~~.

(3) A person may not mail, ship, or otherwise deliver tobacco products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the individual submitting the order a certification that includes:

1. Reliable confirmation that the individual is 21 years of age or older ~~an adult~~; and

2. A statement signed by the individual in writing and under penalty of perjury which:

a. Certifies the address and date of birth of the individual; and

b. Confirms that the individual wants to receive delivery sales from a tobacco company and understands that, under the laws of this state, the following actions are illegal:

(I) Signing another individual's name to the certification;

(II) Selling tobacco products to individuals under the legal minimum purchase age; and

(III) Purchasing tobacco products, if the person making the purchase is under the legal minimum purchase age.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of tobacco products are:

(a) Illegal if made to individuals who are not 21 years of

age or older ~~adults~~.

The notice must include an explanation of how each tax has been, or is to be, paid with respect to the delivery sale.

(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 21 ~~18~~ years of age and requires the payment of all applicable taxes."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another individual who is 21 years of age or older ~~adult~~ who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 ~~27~~ years of age.

2. Proof that the individual is either the addressee or the individual who is 21 years of age or older ~~adult~~ designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

If the person accepting a purchase order for a delivery sale delivers the tobacco products without using a delivery service,

the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.

(8)(a) Except as otherwise provided in this section, a violation of this section by a person other than an individual who is not 21 years of age or older ~~an adult~~ is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and:

1. For a first violation of this section, the person shall be fined $1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

2. For a second or subsequent violation of this section, the person shall be fined $5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(b) A person who is 21 years of age or older ~~an adult~~ and knowingly submits a false certification under subsection (3) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For each offense, the person shall be fined $10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(e) A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not 21 years of age or older ~~an adult~~ commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

(g) An individual who is not 21 years of age or older ~~an~~

~~adult~~ and who knowingly violates any provision of this section commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Paragraph (b) of subsection (1) of section 210.15, Florida Statutes, is amended to read:

210.15 Permits.—

(1)

(b) Permits shall be issued only to persons of good moral character who are not less than 21 ~~18~~ years of age. Permits to corporations shall be issued only to corporations whose officers are of good moral character and not less than 21 ~~18~~ years of age. There shall be no exemptions from the permit fees herein provided to any persons, association of persons, or corporation, any law to the contrary notwithstanding.

Section 3. Subsection (1) of section 386.212, Florida Statutes, is amended to read:

386.212 Smoking and vaping prohibited near school property; penalty.—

(1) It is unlawful for any person under 21 ~~18~~ years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 4. Chapter 569, Florida Statutes, entitled "Tobacco Products," is renamed "Tobacco and Nicotine Products."

Section 5. The Division of Law Revision is directed to:

(1) Create part I of chapter 569, Florida Statutes, consisting of ss. 569.002-569.23, Florida Statutes, to be

entitled "Tobacco Products."

(2) Create part II of chapter 569, Florida Statutes, consisting of ss. 569.31-569.45, Florida Statutes, to be entitled "Nicotine Products."

Section 6. Section 569.002, Florida Statutes, is amended to read:

569.002 Definitions.—As used in this part ~~chapter~~, the term:

(1) "Dealer" is synonymous with the term "retail tobacco products dealer."

(2) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(3) "Nicotine product" has the same meaning as provided in s. 569.31(4).

(4) "Nicotine dispensing device" has the same meaning as provided in s. 569.31(3).

(5) "Permit" is synonymous with the term "retail tobacco products dealer permit."

(6) ~~(4)~~ "Retail tobacco products dealer" means the holder of a retail tobacco products dealer permit.

(7) ~~(5)~~ "Retail tobacco products dealer permit" means a permit issued by the division pursuant to s. 569.003.

(8) ~~(6)~~ "Tobacco products" includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

(9) ~~(7)~~ "Any person under the age of 21 ~~18~~" does not include any person under the age of 21 ~~18~~ who:

(a) ~~Has had his or her disability of nonage removed under chapter 743;~~

~~(b)~~ Is in the military reserve or on active duty in the Armed Forces of the United States;

~~(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility~~; or

(b) ~~(d)~~ Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this part ~~chapter~~.

Section 7. Section 569.0025, Florida Statutes, is created to read:

569.0025 Preemption.—The establishment of the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, tobacco products is preempted to the state.

Section 8. Paragraph (c) of subsection (1) of section 569.003, Florida Statutes, is amended to read:

569.003 Retail tobacco products dealer permits; application; qualifications; fees; renewal; duplicates.—

(1)

(c) Permits shall be issued annually, upon payment of the annual permit fee prescribed by the division. The division shall fix the fee in an amount sufficient to meet the costs incurred by it in carrying out its permitting, enforcement, and administrative responsibilities under this part ~~chapter~~, but the fee may not exceed $50. The proceeds of the fee shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund.

Section 9. Section 569.004, Florida Statutes, is amended to

read:

569.004 Consent to inspection and search without warrant.—An applicant for a permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this chapter, including part II of this chapter if the applicant deals, at retail, in nicotine products within the state or allows a nicotine products vending machine to be located on its premises within the state.

Section 10. Section 569.006, Florida Statutes, is amended to read:

569.006 Retail tobacco products dealers; administrative penalties.—The division may suspend or revoke the permit of the dealer upon sufficient cause appearing of the violation of any of the provisions of this chapter, including part II of this chapter if the dealer deals, at retail, in nicotine products within the state or allows a nicotine products vending machine to be located on its premises within the state, by a dealer or by a dealer's agent or employee. The division may also assess and accept administrative fines of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 11. Subsections (1) and (2) of section 569.007,

Florida Statutes, are amended to read:

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under 21 ~~18~~ years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under the provisions of paragraph (1)(a) and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.

(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 21 ~~18~~ years of age on the licensed premises.

Section 12. Section 569.0075, Florida Statutes, is amended to read:

569.0075 Gift of sample tobacco products prohibited.—The gift of sample tobacco products to any person under the age of 21 ~~18~~ by an entity licensed or permitted under the provisions of chapter 210 or this part ~~chapter~~, or by an employee of such entity, is prohibited and is punishable as provided in s.

569.101.

Section 13. Subsection (1), paragraphs (b) and (c) of subsection (2), and subsection (3) of section 569.008, Florida Statutes, are amended to read:

569.008 Responsible retail tobacco products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) The Legislature intends to prevent the sale of tobacco products to persons under 21 ~~18~~ years of age and to encourage retail tobacco products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail tobacco products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with the provisions of this part ~~chapter~~. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and which includes at least the following topics:

(b) Methods of recognizing and handling customers under 21 ~~18~~ years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 ~~18~~ years of age.

(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 21 ~~18~~ years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Section 14. Section 569.009, Florida Statutes, is amended to read:

569.009 Rulemaking authority.—The division shall adopt any rules necessary to administer and enforce the provisions of this part ~~chapter~~.

Section 15. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 ~~18~~ years of age; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 ~~18~~ years of age, any tobacco product.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year of the first violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the tobacco product was sold,

delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 21 ~~18~~ years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 ~~18~~ years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 ~~18~~ years of age or older.

Section 16. Section 569.11, Florida Statutes, is amended to read:

569.11 Possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 21 ~~18~~ years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under 21 ~~18~~ years of age to knowingly possess any tobacco product. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 21 ~~18~~ years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) Any person under 21 ~~18~~ years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a

violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(5)(a) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

Section 17. Section 569.12, Florida Statutes, is amended to read:

569.12 Jurisdiction; tobacco product and nicotine product enforcement officers or agents; enforcement.—

(1) In addition to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, any law enforcement officer certified under s. 943.10(1), (6), or (8) shall enforce the provisions of this chapter.

(2)(a) A county or municipality may designate certain of its employees or agents as tobacco product and nicotine product enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Nothing in this section shall be construed to permit the carrying of firearms or other weapons by a tobacco product and nicotine product enforcement agent, nor does designation as a tobacco product and nicotine product enforcement officer provide the employee or agent with the power of arrest or subject the employee or agent to the provisions of ss. 943.085-943.255. Nothing in this section amends, alters, or

contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

(b) A tobacco and nicotine product enforcement officer is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s. 569.42.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11 or s. 569.42.

(4) A citation issued to any person violating the provisions of s. 569.11 or s. 569.42 shall be in a form prescribed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and shall contain:

(a) The date and time of issuance.

(b) The name and address of the person to whom the citation is issued.

(c) The date and time the civil infraction was committed.

(d) The facts constituting reasonable cause.

(e) The number of the Florida statute violated.

(f) The name and authority of the citing officer.

(g) The procedure for the person to follow in order to contest the citation, perform the required community service,

attend the required anti-tobacco or anti-tobacco and anti-nicotine program, or to pay the civil penalty.

Section 18. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products or nicotine products to persons under 21 ~~18~~ years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices~~, as defined in s. 877.112,~~ may use a sign that substantially states the following:

THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 569.43(1) ~~s. 877.112~~.

(3) The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) or

subsection (2).

(4) Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(5) The division, through its agents and inspectors, shall enforce this section.

(6) Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 19. Section 569.19, Florida Statutes, is amended to read:

569.19 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by

December 31, on the progress of implementing the enforcement provisions of this part ~~chapter~~. This must include, but is not limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to hold a valid license.

(3) The number of violations for selling tobacco products to persons under age 21 ~~18~~, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 21 ~~18~~ cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 20. Section 569.31, Florida Statutes, is created to read:

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

(1) "Dealer" is synonymous with the term "retail nicotine products dealer."

(2) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(3) "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar

device or product.

(4) "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

(a) Tobacco product, as defined in s. 569.002;

(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(c) Product that contains incidental nicotine.

(5) "Permit" is synonymous with the term "retail nicotine products dealer permit."

(6) "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(7) "Retail nicotine products dealer permit" means a permit issued by the division under s. 569.32.

(8) "Self-service merchandising" means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the dealer or the dealer's owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

(9) "Any person under the age of 21" does not include any person under the age of 21 who:

(a) Is in the military reserve or on active duty in the Armed Forces of the United States; or

(b) Is acting in his or her scope of lawful employment.

Section 21. Section 569.315, Florida Statutes, is created

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to read:

569.315 Preemption.—The establishment of the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, nicotine products is preempted to the state.

Section 22. Section 569.32, Florida Statutes, is created to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products within the state, or to allow a nicotine products vending machine to be located on its premises in the state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products are sold. Each dealer owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within the state, and any other information the division requires. If the applicant has or intends to have more than one

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

place of business dealing in nicotine products within the state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor, or, if the owner is a firm, association, or partnership, by the members or partners thereof, or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked, to any corporation an officer of which has had his or her permit revoked, or to any person who is or has been an officer of a corporation the permit of which has been revoked. Any permit issued to a firm, association, or corporation prohibited from obtaining a permit under this chapter shall be revoked by the division.

(3) Upon approval of an application for a permit, the

division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit. The permit shall be conspicuously displayed at all times at the place for which issued.

Section 23. Section 569.33 Florida Statutes, is created to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 24. Section 569.34, Florida Statutes, is created to read:

569.34 Operating without a retail nicotine products dealer permit; penalty.—

(1) It is unlawful for a person, firm, association, or corporation to deal, at retail, in nicotine products, in any manner, or to allow a nicotine products vending machine to be located on its premises, without having a retail nicotine product dealer permit as required by s. 569.32. A person who violates this section commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002(4), is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in

nicotine products within the state, or allow a nicotine products vending machine to be located on its premises in the state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a tobacco products vending machine to be located on its premises in the state, is subject to, and must be in compliance with, this part.

(3) Any person who violates this section shall be cited for such infraction and shall be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for an infraction under this section may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to appear.

(b) A person cited for violating this section may:

1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits bond, the person is deemed to have admitted violating this section and to have waived the right to a hearing on the issue of commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable

doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit court.

Section 25. Section 569.35, Florida Statutes, is created to read:

569.35 Retail nicotine product dealers; administrative penalties.—The division may suspend or revoke the permit of a dealer, including the retail tobacco products dealer permit of a retail tobacco products dealer as defined in s. 569.002(4), upon sufficient cause appearing of the violation of any of the provisions of this part, by a dealer, or by a dealer's agent or employee. The division may also assess and accept an administrative fine of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 26. Section 569.37, Florida Statutes, is created to read:

569.37 Sale or delivery of nicotine products; restrictions.—

(1) In order to prevent persons under 21 years of age from purchasing or receiving nicotine products, the sale or delivery of nicotine products is prohibited, except:

(a) When under the direct control or line of sight of the

dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under paragraph (a) and are only permissible from a machine that is equipped with an operational lockout device that is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one nicotine product is dispensed at a time.

(2)(a) A dealer that sells nicotine products may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.

(b) A dealer that sells nicotine products may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.

(3) The provisions of subsections (1) and (2) shall not apply to an establishment that prohibits persons under 21 years of age on the licensed premises.

(4) A dealer or a dealer's agent or employee may require proof of age of a purchaser of a nicotine product before selling the product to that person.

Section 27. Section 569.38, Florida Statutes, is created to read:

569.38 Gift of sample nicotine products and nicotine dispensing devices.—The gift of sample nicotine products to any person under the age of 21 by an entity permitted under this

part, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.41.

Section 28. Section 569.381, Florida Statutes, is created to read:

569.381 Responsible retail nicotine products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) It is the intent of the Legislature to prevent the sale of nicotine products to persons under 21 years of age and to encourage retail nicotine products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail nicotine products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with this part. The dealer must provide a training program for the dealer's employees which addresses the use and sale of nicotine products and which includes at least the following topics:

(a) Laws covering the sale of nicotine products.

(b) Methods of recognizing and handling customers under 21 years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 years of age.

(d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

(3) In determining penalties under s. 569.35, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a nicotine product to a person under 21 years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

(4) The division shall develop and make available a model nicotine products training program designed to ensure adherence to this part by dealers and their employees which, if followed, will qualify dealers as responsible dealers.

(5) Dealers shall exercise diligence in the management and supervision of their premises and in the supervision and training of their employees, agents, or servants. In proceedings to impose penalties under s. 569.35, proof that employees, agents, or servants of the dealer, while in the scope of their employment, committed at least three violations of s. 569.41 during a 180-day period shall be prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

(6) The division may consider qualification as a responsible retail nicotine products dealer under this section as evidence that the dealer properly exercised the diligence required under this section.

Section 29. Section 569.39, Florida Statutes, is created to

read:

569.39 Rulemaking authority.—The division shall adopt rules to administer and enforce this part.

Section 30. Section 569.41, Florida Statutes, is created to read:

569.41 Selling, delivering, bartering, furnishing, or giving nicotine products to persons under 21 years of age; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 years of age, any nicotine product.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year after the first violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the nicotine product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 21 years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by the state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and

acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

Section 31. Section 569.42, Florida Statutes, is created to read:

569.42 Possession, misrepresenting age or military service to purchase, and purchase of nicotine products by persons under 21 years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under 21 years of age to knowingly possess any nicotine product. Any person under 21 years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 21 years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any nicotine product, or to purchase, or attempt to purchase, any nicotine product from a person or a vending machine. Any person under 21 years of age

who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) Any person under 21 years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and anti-nicotine program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the

state for the purpose of chapter 440, for the duration of such service.

(5)(a) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and the person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco and anti-nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court under this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of nicotine products by children. The remaining 20 percent of civil penalties received by a county court under this section shall remain with the clerk of the county court to cover administrative costs.

Section 32. Section 569.43, Florida Statutes, is created to read:

569.43 Posting of a sign stating that the sale of nicotine products or nicotine dispensing devices to persons under 21 years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells nicotine products shall post a clear and conspicuous sign in each place of business at which such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) The division shall make available to dealers of nicotine products signs that meet the requirements of subsection (1).

(3) Any dealer that sells nicotine products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase nicotine products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated

systems that can verify whether a person is of legal age to purchase nicotine products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.35.

(4) The division, through its agents and inspectors, shall enforce this section.

(5) Any person who fails to comply with subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 33. Section 569.44, Florida Statutes, is created to read:

569.44 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this part. This must include, but is not limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to hold a valid permit.

(3) The number of violations for selling nicotine products to persons under age 21, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 21 cited for violations of s. 569.42 and sanctions imposed as a result of citation.

Section 34. Section 569.45, Florida Statutes, is created to read:

569.45 Mail order, Internet, and remote sales of nicotine products; age verification.—

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

(a) "Consumer" means a person in the state who comes into possession of any nicotine product who, at the time of possession, is not intending to sell or distribute the nicotine product, or is not a retailer.

(b) "Delivery sale" means any sale of nicotine products to a consumer in the state for which:

1. The consumer submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or

2. The nicotine products are delivered by use of mail or a delivery service.

(c) "Delivery service" means any person engaged in the commercial delivery of letters, packages, or other containers.

(d) "Legal minimum purchase age" means the minimum age at which an individual may legally purchase nicotine products in the state.

(e) "Retailer" means any person who is required to obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as defined in s. 569.002.

(f) "Shipping container" means a container in which nicotine products are shipped in connection with a delivery sale.

(g) "Shipping document" means a bill of lading, airbill, United States Postal Service form, or any other document used to verify the undertaking by a delivery service to deliver letters, packages, or other containers.

(2)(a) A sale of nicotine products constituting a delivery sale under paragraph (1)(c) is a delivery sale regardless of whether the person accepting the order for the delivery sale is

located inside or outside the state.

(b) A retailer must obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as defined in s. 569.002, from the division under the requirements of this chapter before accepting an order for a delivery sale.

(c) A person may not make a delivery sale of nicotine products to any individual who is not 21 years of age or older.

(d) Each person accepting an order for a delivery sale must comply with each of the following:

1. The age verification requirements set forth in subsection (3).

2. The disclosure requirements set forth in subsection (4).

3. The shipping requirements set forth in subsection (5).

(3) A person may not mail, ship, or otherwise deliver nicotine products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the person submitting the order a certification that includes:

1. Reliable confirmation that the person is 21 years of age or older; and

2. A statement signed by the person in writing and under penalty of perjury which:

a. Certifies the address and date of birth of the person; and

b. Confirms that the person wants to receive delivery sales from a nicotine products company and understands that, under the laws of the state, the following actions are illegal:

(I) Signing another person's name to the certification;

(II) Selling nicotine products to individuals who are not 21 years of age or older; and

(III) Purchasing nicotine products, if the person making the purchase is not 21 years of age or older.

(b) Makes a good faith effort to verify the information contained in the certification provided by the individual under paragraph (a) against a commercially available database that may be reasonably relied upon for accurate age information or obtains a photocopy or other image of a valid government-issued identification card stating the date of birth or age of the individual.

(c) Provides to the individual, via electronic mail or other means, a notice meeting the requirements of subsection (4).

(d) If an order for nicotine products is made pursuant to an advertisement on the Internet, receives payment for the delivery sale from the consumer by a credit or debit card issued in the name of the consumer, or by personal or company check of the consumer.

(e) The person accepting the order for delivery sale shall submit, to each credit card acquiring company with which the person has credit card sales, identification information in an appropriate form and format so that the words "nicotine product" may be printed in the purchaser's credit card statement when a purchase of a nicotine product is made by credit card payment.

(f) Makes a telephone call after 5 p.m. to the purchaser confirming the order before shipping the nicotine products. The telephone call may be a person-to-person call or a recorded message. The person accepting the order for delivery sale is not

required to speak directly with a person and may leave a message on an answering machine or through voice mail.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of nicotine products are:

(a) Illegal if made to individuals who are not 21 years of age or older.

(b) Restricted to those individuals who provide verifiable proof of age in accordance with subsection (3).

(5) Each person who mails, ships, or otherwise delivers nicotine products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Nicotine Products: Florida law prohibits shipping to individuals under 21 years of age."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another person 21 years of age or older who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 years of age.

2. Proof that the individual is either the addressee or the

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

individual who is 21 years of age or older designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

If the person accepting a purchase order for a delivery sale delivers the nicotine products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.

(6) This section does not apply to delivery sales of nicotine products to a retail nicotine products dealer or a retail tobacco products dealer, as defined in s. 569.002.

(7) An individual 21 years of age or older who knowingly violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) The Attorney General, the Attorney General's designee, or a state attorney may bring an action in the appropriate court in the state to prevent or restrain violations of this section by any person.

Section 35. Section 877.112, Florida Statutes, is repealed.

Section 36. This act shall take effect October 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: April 3, 2021

I respectfully request that **Senate Bill #1080**, relating to Tobacco and Nicotine Products, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

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

4/16/2021
Meeting Date

SB1080
Bill Number (if applicable)

Topic Local Control and Regulation of Tobacco Products

Amendment Barcode (if applicable)

Name Ashley Lyerly

Job Title Director of Advocacy

Address P.O. Box 43263
Street

Phone 205-968-2266

Vestavia AL 35243
City *State* *Zip*

Email ashley.lyerly@lung.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Lung Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

04/16/2021
Meeting Date

1080
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Tobacco and Nicotine

Name Natalie Kato

Job Title Attorney

Address 119 S. Monroe Street
Street

Phone 8506816788

Tallahassee — *City* | Fl — *State* | 32312 — *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tobacco 21

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/21
Meeting Date

SB 1080
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Tobacco & Nicotine Products

Name Tiffany McCaskill Henderson

Job Title Government Relations Director

Address 2851 Remington Green Cir.
Street
Tallahassee, FL 32308
City *State* *Zip*

Phone (850) 933-5928

Email tiffany.henderson@heart.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Heart 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)

4/16/21
Meeting Date

1080
Bill Number (if applicable)

Topic Tobacco & Nicotine Products

Amendment Barcode (if applicable)

Name Susan Harbin

Job Title Senior Govt Relations Director

Address _____ Phone 770-546-8945
Street

Email susan.harbin@cancer.org
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing American Cancer Society Cancer Action Network

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 1234
INTRODUCER:	Judiciary Committee and Senator Boyd
SUBJECT:	False Reports of Crimes
DATE:	April 15, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

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

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

The bill takes effect upon becoming a law.

II. Present Situation:

Swatting

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

False Reports Concerning the Commission of Any Crime

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

Examples of Other Statutes Involving False Information or False Reporting

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

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

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[1] A "S.W.A.T." team is a special weapons and tactics team.
[2] Press Release, The Florida Senate, *Senator Boyd Files Legislation to Stop the False Reporting of Crimes* (Feb. 11, 2021), *available at* https://www.flsenate.gov/Media/PressReleases/show/3911 (last visited on March 3, 2021).
[3] Josh Fruhlinger, *What is swatting? Unleashing armed police against your enemies* (Nov. 25, 2020), CSO (IDG Communications, Inc.), *available at* https://www.csoonline.com/article/3573381/what-is-swatting-unleashing-armed-police-against-your-enemies.html (last visited on March 3, 2021).
[4] A first degree misdemeanor is punishable by up to 1 year in county jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.
[5] A third degree felony is punishable by up to 5 years in state prison and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[6] It is a third degree felony if the person has been convicted four times of the unauthorized use of the 911 system and continues to engage in such unauthorized use, or if the value of the service or service charge obtained in violation of s. 365.172(14), F.S., exceeds $100. Section 365.172(14), F.S.
[7] A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up $500. Sections 775.082 and 775.083, F.S. A second or subsequent violation is a first degree misdemeanor. Section 401.41(3), F.S.
[8] Emergency medical services do not appear to include law enforcement services. *See* s. 401.407(3), F.S. (defining "emergency medical services" in regard to emergency medical services grants).

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

III. Effect of Proposed Changes:

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

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

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

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

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

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

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

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

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.49 of the Florida Statutes.

IX. Additional Information:

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

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

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

B. Amendments:

None.

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 Boyd

590-03537-21 20211234c1

A bill to be entitled

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

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

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

817.49 False reports of commission of crimes; penalty.—

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

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

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

1. A response by a federal, a state, a district, a

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Florida Senate - 2021 **CS for SB 1234**

590-03537-21 20211234c1

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

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

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

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JIM BOYD
21st District

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

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 31, 2021

Senator Passidomo
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Madam Chair:

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

"Swatting" is a term used to describe the false reporting of a crime that results in a serious response from law enforcement often activating local SWAT teams. CS/SB 1234 would serve as a deterrent by increasing penalties for those who engage in this criminal activity.

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 B. Phelps
Cynthia Futch

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

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

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 1288
INTRODUCER:	Judiciary Committee and Senator Boyd
SUBJECT:	Assets of an Estate in Administration
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Schrader	Knudson	BI	**Favorable**
3.	Bond	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1288 amends s. 69.031, F.S., to repeal the requirements that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation and doing business in the state in order to qualify as a depository institution for court-appointed fiduciaries. The Federal Savings and Loan Insurance Corporation was dissolved in 1989, making compliance with that requirement impossible.

The bill is effective July 1, 2021.

II. Present Situation:

Courts are commonly called on to assume control over a person's property. The most common form of this is probate, but other common areas include guardianship and receivership. The trial judge does not have the time or expertise to inventory, manage, and distribute such property, and consequently a fiduciary is appointed. These court-appointed fiduciaries are known by many names, including personal representative, guardian, curator, executor, administrator, trustee, or receiver. Current law provides numerous safeguards to guard against theft or mismanagement of property by a court-appointed fiduciary. A common safeguard is a requirement that a court-appointed fiduciary post a surety bond. A surety bond "is a promise to be liable for the debt, default, or failure of another. It is a three-party contract by which one party (the surety)

guarantees the performance or obligations of a second party (the principal) to a third party (the obligee)."[1]

Surety bonds can be expensive and reduce the amount that the heirs, beneficiaries and creditors may receive from an estate, trust or individual.[2] Further, there are circumstances where a bond can be difficult to obtain or may not be available at any cost.[3] Current law at s. 69.031, F.S., gives the court an alternative safeguard applicable to all court-appointed fiduciaries – the use of a depository account. A depository account may be used where "the size of the bond . . . is burdensome or for other cause." Where a depository account is used, the property of the estate is deposited with a bank, trust company, or savings and loan. Court approval is required for every distribution from a depository account.[4]

A depository account must be placed with a bank, trust company, or savings and loan association "(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)" designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer.[5]

The requirement that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation is problematic. The Federal Savings and Loan Insurance Corporation was dissolved in 1989.[6] The requirement that a savings and loan must be doing business in the state is unique to savings and loan institutions, there is no similar requirement applicable to a bank or trust company appointed by the court as a depository institution.

III. Effect of Proposed Changes:

The bill amends s. 69.031, F.S., to remove the requirements that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation and be doing business in the state in order to qualify as a depository institution for court-appointed fiduciaries.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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[1] *What are Surety Bonds*, National Association of Surety Bond Producers, https://www.nasbp.org/getabond/about-surety (last visited March 13, 2021).
[2] *Fiduciary Bonds—Who Needs Them*, XI National Law Review 72, *available at:* https://www.natlawreview.com/article/fiduciary-bonds-who-needs-them (August 3, 2015).
[3] *Id.*
[4] *See* Gale v. Harbor Fed. Sav. & Loan, 571 So. 2d 114 (Fla. 4th DCA 1990), where the court drew a distinction between a between a custodial account and an account placed pursuant to s. 69.031, F.S., in regards to restrictions on withdrawals.
[5] Section 69.031(1), F.S.
[6] Pub. L. No. 101–73, 103 Stat. 183 (August 9, 1989).

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 69.031 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 by Judiciary on March 9, 2020:
The bill as filed only repealed the requirement that a savings and loan be a member of Federal Savings and Loan Insurance Corporation. The committee substitute also repeals

the requirement that a savings and loan institution be doing business in the state in order to qualify as a depository institution.

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 Boyd

590-02603-21 20211288c1

A bill to be entitled

An act relating to assets of an estate in administration; amending s. 69.031, F.S.; deleting a requirement that assets of an estate in administration may be placed in a savings and loan association only if such savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state; providing an effective date.

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

Section 1. Subsection (1) of section 69.031, Florida Statutes, is amended to read:

69.031 Designated financial institutions for assets in hands of guardians, curators, administrators, trustees, receivers, or other officers.—

(1) When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal assets of the estate placed with a bank, trust company, or savings and loan association ~~(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)~~ designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer. When the assets are placed

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590-02603-21 20211288c1

with the designated financial institution, it shall file a receipt therefor in the name of the estate and give the officer a copy. Such receipt shall acknowledge the assets received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping, subject to the instructions of the officer authorized by order of the court directed to the financial institution.

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 JIM BOYD
21st District

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

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 17, 2021

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

Dear Madam Chair Passidomo:

I respectfully request that CS/SB 1288: Assets of an Estate in Administration, be scheduled for a hearing in the Committee on Rules at your earliest convenience. The Federal Savings and Loan Insurance Corporation was dissolved in 1989, this bill removes it from statute.

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

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 1434
INTRODUCER:	Banking and Insurance Committee and Senator Wright
SUBJECT:	Disposition of Unclaimed Property
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	**Schrader**	**Phelps**	**RC**	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1434 makes revisions to the Florida Disposition of Unclaimed Property Act relating to the claims process under the Act. Specifically, the bill replaces the power of attorney and full disclosure statement process used by claimant representatives as provided in ch. 717, F.S., with a standardized unclaimed property recovery agreement for claimant representatives to use when recovering unclaimed property on behalf of a client claimant. The bill also creates a standardized unclaimed property purchase agreement that must be used by purchasers of unclaimed property held by the Division of Unclaimed Property.

The bill provides that the total fees and costs that may be charged in a recovery agreement, or the total discount in the case of a purchase agreement, may not exceed 30 percent of the claimed amount.

The bill also revises 717.124(7), F.S., to increases from $1,000 to $2,000 the maximum recovery value for claims submitted electronically that utilize identity verification processes other than government issued photographic identification or a sworn, notarized statement.

II. Present Situation:

As part of the DFS' statutory responsibilities, the Department is to collect and return unclaimed property belonging to Florida residents.[1] Within the DFS is the Division of Unclaimed Property

[1] Florida Department of Financial Services, *Statement of Agency Organization and Operation*, https://www.myfloridacfo.com/sitepages/required/agencyorg.aspx (last visited March 26, 2021).

(Division)—the Division is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them.

Florida Disposition of Unclaimed Property Act

Chapter 717, F.S., is entitled the Florida Disposition of Unclaimed Property Act, over which the DFS is responsible to administer. Unclaimed property is any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.[2] Until claimed, unclaimed money is deposited into the state school fund to be used for public education. There is no statute of limitations and persons may claim their property at any time and at no cost.[3]

Delivery of Unclaimed Property held in Safekeeping Repository

Pursuant to s. 717.119(5), F.S., persons holding unclaimed intangible and tangible property (holder) in a safekeeping repository (such as a safe deposit box), are not to release said property to the DFS until at least 120 days after the person files the unclaimed property report required under 717.117, F.S. When sending said property to the DFS, the holder must insure the contents, clearly mark the package to "deliver unopened," and must either deliver the contents in a single shipment or pursuant to a single detailed schedule provided to the department.

DFS Unclaimed Property Database

The DFS maintains a database of all unclaimed property within its possession. According to the DFS, over 350 claimant representatives are registered with the Department to gain access to this database.[4]

Claimant Representatives

Pursuant to s. 717.124, F.S. a claimant representative must be a Florida-licensed attorney, a licensed Florida-certified public accountant (CPA), or a private investigator licensed under ch. 493, F.S. A claimant must also register with the DFS on a form designated by the Department and provide certain documentation (including tax identification number, identification, electronic funds transfer information, business address, and employees and agents) and credentials as to their status as an attorney, CPA, or private investigator.[5]

The general business model for registered claimant representatives (representatives) is that they search the DFS unclaimed property database and solicit or seek authorizations from potential claimants to file claims with the DFS on the claimants behalf to recover any of the claimant's

[2] Sections 717.104-717.116, F.S.
[3] Florida Department of Financial Services, *Unclaimed Property*, https://myfloridacfo.com/Division/UnclaimedProperty/ (last visited March 26, 2021).
[4] Department of Financial Services, *Legislative Bill Analysis of SB 1434* (March 9, 2021) (on file with Senate Banking and Insurance Committee).
[5] Section 717.1400, F.S.

unclaimed property held by the Department. Representatives are authorized to charge fees and costs to claimants for their services, subject to certain restrictions (see *Authorized charges* below).

Claim Process for Representatives

In order to move forward in obtaining unclaimed property on a potential client's behalf, the representative must first obtain that client's authorization. At minimum, the representative must first execute limited power of attorney with the client as provided in s. 717.135, F.S. While s. 717.135, F.S., specifies certain minimum requirements for these powers of attorney, each representative generally has their own, unique, version of these documents and they can very as to wording, format, credentialing references, and logos. Most of these agreements, according to the DFS, contain some version of the statement that "I hereby authorize…to file a claim on my behalf for the unclaimed property accounts listed and to receive the fee I authorize."[6] Also, according to the DFS, many of these agreements contain legalese which may be difficult for some potential clients to understand.[7] This language could include: assignments of interest or rights, irrevocable assignments, exclusivity agreements, requirements that the client claimant to act upon all requests and instructions of the representative, venue and attorney fee provisions, and some that provide that if the claimant fails to act, the representative can claim the client claimant's unclaimed property separate from said client.

Authorized Charges

For representatives that have engaged their claimant clients through only a power of attorney, s. 717.135(2), F.S., caps fees and costs at 20 percent per unclaimed property account held by the DFS. The charges cap is calculated based on the value of the property at the time a power of attorney is signed by the claimant with the representative. For claimants who are residents of the United States, the total fees and costs assessed are also limited to $1,000.

If a representative provides their client with a "full disclosure statement" as provided in s. 717.135(3), F.S., and the client signs and acknowledges said statement before executing a power of attorney with the representative, then fees are limited only those fees disclosed in said statement. Florida provides no hard cap in this situation—fees may be whatever the representative wishes to charge, as long as such fees are properly disclosed.

Filing of Claims by Apparent Owners

The DFS also provides a publicly available version of their unclaimed property database accessible via the Internet.[8] This version of the database that does not require one to register with the department to conduct a search. Via this form, a member of the public can search for unclaimed property by first and last name, or business name. These results can be further narrowed by providing a middle name and location information. Once a person locates an account that is potentially theirs, they can claim the account and start the process of verifying their identity and recovering their unclaimed property.

[6] *Supra* note 4.
[7] *Id.*
[8] The website is located here: https://www.fltreasurehunt.gov/ControlServlet?ActionForm=GotoNewPublicSearch.

Generally, under 717.124(1), F.S., in order to submit a claim, the claimant must provide the DFS with a legible copy of a valid driver license, or other government-issued photographic identification, at the time the original claim form is filed. In lieu of photographic identification, a claimant may also provide the DFS with a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address.

Section 717.124(7), F.S., also allows an apparent owner to file a claim electronically and, if the claim submitted is for $1,000 or less, the DFS may use a form of identity verification other than a government issued photographic identification or a sworn, notarized statement. Implementing this provision, rule 69G-20.0022(2)(c), F.A.C., specifies that the DFS may use an "identity authentication service" to verify identity in such circumstances.

III. Effect of Proposed Changes:

Section 1 amends s. 717.119, F.S., to require that, when a will or trust instrument is included within an unclaimed safe deposit box sent to the DFS under 717.119(5), F.S., the department must provide a copy of the will, trust, and any codicils or amendments to such will or trust, upon request, to anyone who provides the department with evidence of the death of the testator or settlor.

Section 2 of the bill amends s. 717.124, F.S., to significantly revise the claims process for registered claims representatives (representatives) to engage clients and begin the recovery process with the DFS. The bill replaces the power of attorney and full disclosure statement process and replaces them with a standardized recovery agreement (provided in more detail in **Section 5** of the bill).

The section also revises section 717.124(7), F.S., regarding the filing of a claims electronically. The bill provides that if the electronically filed claim submitted is for $2,000 or less, the DFS may use a form of identity verification other than a government issued photographic identification or a sworn, notarized statement. Under current law, this is $1,000 or less.

Finally, the section makes conforming and technical changes, including removing a provision relating to the DFS being able to deny a claim when a representative refuses to reduce fees and costs being charged to the claimant to the maximum fees and costs allowed under ch. 717, F.S., and removing a requirement that claim documents be manually signed.

Sections 3, 4, and 5 make a conforming changes to ss. 717.12404, 717.1315, and 717.1322, F.S., respectively, to implement changes made by **Sections 1** and **5** of the bill.

Section 6 substantially rewrites s. 717.135, F.S., to eliminate the previous power of attorney-based claim process and replace it with the mandatory use of an "Unclaimed Property Recovery Agreement" or an "Unclaimed Property Purchase Agreement" as the sole agreement to be used by representatives to engage claimant clients. The section provides penalties for representatives that use an agreement other than those approved by the DFS pursuant to the proposed section and voids any recovery attempted by a representative utilizing such an agreement.

The section directs the DFS to adopt by rule forms for these agreements, providing that the agreements must include and disclose all of the following provisions:

- The dollar amount of the unclaimed property accounts to be claimed or sold;
- The total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing claimant's representative;
- The total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing claimant's representative;
- The net dollar amount to be received by the claimant or the seller;
- The DFS unclaimed property account number;
- For the Unclaimed Property Purchase Agreement, a statement that the amount of the purchase price will be remitted to the seller by the purchaser within 30 days after the execution of the agreement by the seller;
- The name, address, e-mail address, phone number, and license number of the claimant's representative;
- The manual signature of the claimant or seller and the date signed. For claims of $2,000 or less, the signature may be digital instead;
- The social security number or taxpayer identification number of the claimant or seller, if available; and
- The total fees and costs, or the total discount in the case of a purchase agreement, may not exceed 30 percent of the claimed amount. If the total fees and costs exceed 30 percent, the fee shall be reduced to 30 percent and the net balance shall be remitted directly by the department to the claimant.

In contrast to the current requirements under s. 717.135, F.S., the proposed 717.135, F.S., does not specifically require that the representative disclose to the client claimant that the unclaimed property is in the hands of the DFS and provide the DFS's mailing and website addresses.[9] As noted above, however, the bill does require the representative to provide the client claimant with the DFS account number of the unclaimed property.

The section also includes a requirement that for Unclaimed Property Purchase Agreements, proof that the representative has made payment to the claimant seller must be filed with the DFS along with the claim. If the representative fails to do so, the claim is void.

For both the Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement, the form created by the DFS may not contain language that would make either agreement irrevocable or create an assignment of property held by the DFS.

Additionally, the section authorizes the DFS, once it approves a claim, to pay out any additional account owned by the claimant, provided that a subsequent claim has not been filed, or is not pending for the claimant, at the time the DFS approves the claim.

[9] Providing this information is required in current law for both the power of attorney and full disclosure statements. *See* s. 717.135(2)(a) and (3)(a), F.S., respectively.

Finally, the section contains a provision clarifying that it does not supersede s. 717.1241, F.S., which provides the process to be used to resolve conflicting claims for unclaimed property.

Section 7 repeals s. 717.1351, F.S., as, with the changes made by the bill, the section is no longer necessary.

Section 8 specifies that the bill shall take effect upon becoming a law.

The DFS asserts that the changes made by the bill should make the process of handling claims made by claims representatives more efficient. In addition, DFS states that the standardization of the agreements, elimination of varying fee caps, and the prohibition against irrevocable or assignment clauses will provide for more consumer protection and make the process more consumer friendly.[10]

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:

Currently, fees and costs are capped at 20 percent when a representatives engages their claimant client through only a power of attorney, and if the client is a natural person residing in the United States, fees and costs are also limited to $1,000 per account. If the

[10] *Supra* note 4.

claimant's representative uses "full disclosure statement," however, there is no limit on fees and costs. The bill does away with this dual structure and replaces it with a 30 percent cap on fees and costs. Data provided by the DFS, shows that of the 475,395 claims paid to claimant representatives since July 1, 2016, 24,347 (approximately 5.1 percent) were paid with fees and charges greater than 20 percent and 9,982 (approximately 2.1 percent) were paid with a fees and charges of greater than 30 percent. The average fees and changes paid by client claimants during this time was 13.32 percent—well below the current 20 percent cap for when client claimants are engaged by power of attorney only.[11]

Thus the bill's 30 percent limit on fees and costs will affect a relatively small percentage of circumstances where client claimants are paying fees and charges in excess of 30 percent to claims representatives. The significant majority of representatives are not charging fees and costs at the current 20 percent cap (that only applies in certain circumstances), thus one may infer that the raising of the cap to 30 percent is unlikely to result in a significant percentage of client claimants paying higher fees and costs.

C. Government Sector Impact:

The DFS asserts that the changes will make the claim process for unclaimed property more efficient by standardizing the claim form used by claimant representatives. Given this, the DFS may see some reduction in cost in processing such claims.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 717.119, 717.124 and 717.135.
This bill makes conforming changes to the following sections of the Florida Statutes: 717.12404, 717.1315, and 717.1322.
This bill repeals section 717.1351 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 30, 2021:
The committee substitute:

[11] E-mail from Meredith Stanfield of the Florida Department of Financial Services to Kurt Schrader of the Florida Senate Banking and Insurance Committee (March 29, 2021) (on file with Senate Banking and Insurance Committee).

- Specifies that if a will or trust instrument is included within a safe deposit box or other safekeeping repository delivered to DFS, the department must provide a copy of a copy of such will, trust, and any codicils or amendments to such will or trust instrument, upon request to a person providing evidence of the death of the testator or settlor.
- Removes a requirement in s. 717.124(10), F.S., that the signature required to execute an Unclaimed Property Recovery Agreement and an Unclaimed Property Recovery Agreement must be performed "manually."
- Removes a requirement that claims representatives provide client claimants with the apparent owner names associated with an account for which the representative is proposing to submit a claim.
- Raises the maximum claimant representative fees and charges from 25 to 30 percent. Current law provides no limit on claimant representative fees and charges if the claimant representative fully discloses to the owner that the property is being held by the DFS and provides the mailing address and Internet address for the Division of Unclaimed Property. If no such disclosure is made, current law limits such fees and charges to 20 percent.
- Specifies that a claimant representative using the Unclaimed Property Purchase Agreement form must provide proof that they have made payment to the claimant. The original bill provided that the proof must be that the claimant received said payment.
- Provides technical changes.

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 Banking and Insurance; and Senator Wright

597-03593-21 20211434c1

A bill to be entitled

An act relating to disposition of unclaimed property; amending s. 717.119, F.S.; requiring the Department of Financial Services to provide copies of wills and trusts included in safe-deposit box contents under certain circumstances; amending s. 717.124, F.S.; requiring specified agreements for certain claims; removing provisions requiring the department to deny certain unclaimed property claims; increasing the threshold required to use a different method of identity verification for electronic claims; conforming provisions to changes made by the act; amending ss. 717.12404, 717.1315, and 717.1322, F.S.; conforming provisions to changes made by the act; amending s. 717.135, F.S.; requiring the department to adopt forms for an Unclaimed Property Recovery Agreement and an Unclaimed Property Purchase Agreement; providing requirements for such agreements; providing that the agreements are the exclusive means for a claimant's representative to file a claim or to recover fees and costs; prohibiting a claimant's representative from using or distributing any other form of agreement; providing administrative and civil penalties; authorizing the department to pay additional accounts under certain circumstances; providing applicability; repealing s. 717.1351, F.S., relating to unclaimed property claims; providing an effective date.

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

597-03593-21 20211434c1

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

Section 1. Paragraph (e) is added to subsection (5) of section 717.119, Florida Statutes, to read:

717.119 Payment or delivery of unclaimed property.—

(5) All intangible and tangible property held in a safe-deposit box or any other safekeeping repository reported under s. 717.117 shall not be delivered to the department until 120 days after the report due date. The delivery of the property, through the United States mail or any other carrier, shall be insured by the holder at an amount equal to the estimated value of the property. Each package shall be clearly marked on the outside "Deliver Unopened." A holder's safe-deposit box contents shall be delivered to the department in a single shipment. In lieu of a single shipment, holders may provide the department with a single detailed shipping schedule that includes package tracking information for all packages being sent pursuant to this section.

(e) If a will or trust instrument is included among the contents of a safe-deposit box or other safekeeping repository delivered to the department, the department must provide a copy of the will, trust, and any codicils or amendments to such will or trust instrument upon request to anyone who provides the department with evidence of the death of the testator or settlor.

Section 2. Subsection (1), paragraphs (b) and (c) of subsection (4), and subsections (7) and (10) of section 717.124, Florida Statutes, are amended to read:

717.124 Unclaimed property claims.—

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

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant's representative. The claimant's representative must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant's representative must be registered with the department under this chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with

the original claim form and the original Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement ~~power of attorney or purchase agreement~~, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A ~~claimant or the claimant's representative shall be deemed to have withdrawn a~~ claim is considered to have been withdrawn by a claimant or the claimant's representative if ~~no response to~~ the department does not receive a response to its ~~department's~~ request for additional information ~~is received by the department~~ within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each claim. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;

2. Was reported with an address outside of the United States;

3. Is being claimed by a person outside of the United States; or

4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

~~(d) The department shall deny any claim under which the claimant's representative has refused to authorize the department to reduce the fees and costs to the maximum permitted under this chapter.~~

(4)

(b) If an owner authorizes an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, and registered with the department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with the Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement under s. 717.135 ~~such power of attorney~~. The original Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement ~~power of attorney~~ must be executed by the claimant or seller ~~owner~~ and must be filed with the department.

(c)1. Payments of approved claims for unclaimed cash accounts must ~~shall~~ be made to the owner after deducting any fees and costs authorized by the claimant under an Unclaimed Property Recovery Agreement ~~pursuant to a written power of attorney~~. The contents of a safe-deposit box must ~~shall~~ be delivered directly to the claimant ~~notwithstanding any power of attorney or agreement to the contrary~~.

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2. Payments of fees and costs authorized under an Unclaimed Property Recovery Agreement ~~pursuant to a written power of attorney~~ for approved claims must ~~shall~~ be made or issued to the law firm of the designated attorney licensed to practice law in this state, the public accountancy firm of the licensed Florida-certified public accountant, or the designated employing private investigative agency licensed by this state. Such payments shall be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days. Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, must ~~shall~~ be to the attorney, certified public accountant, or private investigator.

(7) The department may allow an apparent owner to electronically submit a claim for unclaimed property to the department. If a claim is submitted electronically for $2,000 ~~$1,000~~ or less, the department may use a method of identity verification other than a copy of a valid driver license, other government-issued photographic identification, or a sworn notarized statement. The department may adopt rules to implement this subsection.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a ~~registered~~ claimant's representative or a buyer of unclaimed property may electronically submit to the department an electronic image of a completed claim and claims-related documents under ~~pursuant to~~ this chapter, including an Unclaimed Property Recovery Agreement

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or Unclaimed Property Purchase Agreement ~~a limited power of attorney or purchase agreement~~ that has been ~~manually~~ signed and dated by a claimant or seller under ~~pursuant to~~ s. 717.135 ~~or s. 717.1351~~, after the claimant's representative or the buyer of unclaimed property receives the original documents provided by the claimant or the seller for any claim. Each claim filed by a ~~registered~~ claimant's representative or a buyer of unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or the buyer of unclaimed property. All original documents must be kept in the original form, by claim number, under the secure control of the claimant's representative or the buyer of unclaimed property and must be available for inspection by the department in accordance with s. 717.1315. The department may adopt rules to implement this subsection.

Section 3. Subsection (2) of section 717.12404, Florida Statutes, is amended to read:

717.12404 Claims on behalf of a business entity or trust.—

(2) Claims on behalf of a dissolved corporation, a business entity other than an active corporation, or a trust must include a legible copy of a valid driver license of the person acting on behalf of the dissolved corporation, business entity other than an active corporation, or trust. If the person has not been issued a valid driver license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States, a foreign nation, or a

political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person's identity and states the person's full name and address. The person must produce his or her photographic identification issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement ~~power of attorney~~, if applicable, is void.

Section 4. Subsection (1) of section 717.1315, Florida Statutes, is amended to read:

717.1315 Retention of records by claimant's representatives and buyers of unclaimed property.—

(1) Every claimant's representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this chapter to enable the department to determine whether such person is complying with this chapter and the rules adopted by the department under this chapter. Every claimant's representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement ~~power of attorney or agreement~~ between the owner and such claimant's representative or buyer, for at least 3 years after the date of the initial ~~power of attorney or~~ agreement.

Section 5. Paragraph (j) of subsection (1) of section 717.1322, Florida Statutes, is amended to read:

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(j) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement ~~a power of attorney~~ to file a claim for unclaimed property owned by another, or a contract or agreement to purchase unclaimed property, unless such person is registered with the department under ~~pursuant to~~ this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or a private investigator licensed under chapter 493. This paragraph ~~subsection~~ does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to

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probate the estate of the owner or an heir or legatee of the owner.

Section 6. Section 717.135, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 717.135, F.S., for present text.)

717.135 Recovery agreements and purchase agreements for claims filed by a claimant's representative; fees and costs.—

(1) In order to protect the interests of owners of unclaimed property, the department shall adopt by rule a form entitled "Unclaimed Property Recovery Agreement" and a form entitled "Unclaimed Property Purchase Agreement."

(2) The Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement must include and disclose all of the following:

(a) The total dollar amount of unclaimed property accounts claimed or sold.

(b) The total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing claimant's representative.

(c) The total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing claimant's representative.

(d) The net dollar amount to be received by the claimant or the seller.

(e) For each account claimed, the unclaimed property account number.

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(f) For the Unclaimed Property Purchase Agreement, a statement that the amount of the purchase price will be remitted to the seller by the purchaser within 30 days after the execution of the agreement by the seller.

(g) The name, address, e-mail address, phone number, and license number of the claimant's representative.

(h)1. The manual signature of the claimant or seller and the date signed, affixed on the agreement by the claimant or seller.

2. Notwithstanding any other provision of this chapter to the contrary, the department may allow an apparent owner, who is also the claimant, to sign the agreement electronically for claims of $2,000 or less. All electronic signatures on the Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement must be affixed on the agreement by the claimant or seller using the specific, exclusive eSignature product and protocol authorized by the department.

(i) The social security number or taxpayer identification number of the claimant or seller, if a number has been issued to the claimant or seller.

(j) The total fees and costs, or the total discount in the case of a purchase agreement, which may not exceed 30 percent of the claimed amount. If the total fees and costs exceed 30 percent, the fee shall be reduced to 30 percent and the net balance shall be remitted directly by the department to the claimant.

(3) For an Unclaimed Property Purchase Agreement form, proof that the purchaser has made payment must be filed with the department along with the claim. If proof of payment is not

provided, the claim is void.

(4) A claimant's representative must use the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement as the exclusive means of engaging with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to, or received by, a claimant's representative only after a filed claim has been approved and if the claimant's representative used an agreement authorized by this section.

(6) A claimant's representative may not use or distribute any other agreement, form, or other media with respect to the claimant or seller which relates, directly or indirectly, to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any engagement, authorization, recovery, or fee agreement that is not authorized by this section is void. A claimant's representative is subject to administrative and civil enforcement under s. 717.1322 if he or she uses an agreement that is not authorized by this section.

(7) The Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement may not contain language that makes the agreement irrevocable or that creates an assignment of any portion of unclaimed property held by the department.

(8) When a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that a subsequent claim has not been filed or is not pending for the claimant at the time of approval.

(9) This section does not supersede s. 717.1241.

Section 7. Section 717.1351, Florida Statutes, is repealed.

Section 8. 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:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Finance and Tax
Transportation

SENATOR TOM A. WRIGHT
14th District

April 2, 2021

The Honorable Kathleen Passidomo
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: CS/Senate Bill 1434 – Disposition of Unclaimed Property

Dear Chair Passidomo:

CS/Senate Bill 1434, relating to Disposition of Unclaimed Property has been referred to the Committee on Rules. I am requesting your consideration on placing CS/SB 1434 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright, District 14

cc: John Phelps, Staff Director of the Committee on Rules
Tom Yeatman, Deputy Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:
❒ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

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)

4/16
Meeting Date

1434
Bill Number (if applicable)

Topic Disposition of Unclaimed Property

Amendment Barcode (if applicable)

Name Chase Mitchell

Job Title Senior Management Analyst

Address PL 11, The Capitol
Street

Phone (850) 413-2866

Tallahassee FL 32399
City *State* *Zip*

Email chase.mitchell@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Financial Services

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 1456
INTRODUCER:	Senator Rodrigues
SUBJECT:	Public Records/Examination and Assessment Instruments
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Candelaria	McVaney	GO	**Favorable**
3.	Brick	Phelps	RC	**Favorable**

I. Summary:

SB 1456 makes confidential and exempt from public inspection and copying requirements records related to certain examinations and assessments, including developmental materials and workpapers that are prepared, prescribed, or administered by Florida College System institutions, state universities, or the Department of Education. The bill grants authority to the State Board of Education and the Board of Governors of the State University System to make rules and regulations, respectively, governing the appropriate management of the protected materials.

The bill provides that the public records exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

This bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect on July 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 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]

[1] Art. I, s. 24(a), Fla. Const.
[2] *Id*.

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (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, chapter 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 with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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

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

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

[6] 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] Art. I, s. 24(c), Fla. Const.

[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

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]
- 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

(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.

[22] Section 119.15(6)(b)2., F.S.

- 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]

Exempt Educational Assessment Instruments

Education records, as defined in the Family Educational Rights and Privacy Act (FERPA),[27] are confidential and exempt from the requirement to provide public access to public records.[28] Also specifically confidential and exempt are examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to s. 1008.22, F.S., which relates to the student assessment program for public schools, and 1008.25, F.S., which relates to public school student progression, student support, and reporting requirements. Assessments and examinations covered by this exemption include the statewide, standardized comprehensive assessments, end-of-course assessments, and the Florida Alternate Assessment.[29] The State Board of Education (SBE) is responsible for adopting rules governing access, maintenance, and destruction of the instruments and related materials.[30]

The SBE is also responsible for adopting rules governing access, maintenance, and the destruction of examinations and assessments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to educator certification requirements. The teacher certification assessments and examinations are also confidential and exempt from public records disclosure requirements.[31]

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[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] FERPA applies to records created for an educational purpose and maintained by an educational agency. 20 U.S.C. s. 1232g.

[28] Section 1002.221(1), F.S.

[29] Sections 1008.22, 1008.23 and 1008.25, F.S.

[30] Section 1008.23, F.S.

[31] Sections 1008.23 and 1012.56, F.S.

Other Required Assessments

In addition to the assessments required by ss. 1008.22 and 1008.25, F.S., the law requires:
- A statewide kindergarten screening assessment.[32]
- An assessment to measure learning gains of those students in a Department of Juvenile Justice education program.[33]
- An assessment for the identification of limited English proficient students.[34]
- A civic literacy assessment to be administered by Florida College System institutions and state universities to all incoming students.[35]
- The Preliminary SAT/National Merit Scholar Qualifying Test (PSAT/NMSQT) and the PreACT assessments administered under the Florida Partnership for Minority and Underrepresented Student Achievement.[36]

III. Effect of Proposed Changes:

The bill expands the scope of the existing public records exemption that covers examination and assessment instruments relating to statewide, standardized assessments and student progression. The bill makes confidential and exempt from public access:
- The statewide kindergarten screening assessment.
- The assessment of learning gains for students in a Department of Juvenile Justice education program.
- Assessments for the identification of limited English proficient students.
- The civic literacy assessment administered by Florida College System (FCS) institutions and state universities.
- Teacher certification assessments.
- The Preliminary SAT/National Merit Scholar Qualifying Test and the PreACT assessments administered under the Florida Partnership for Minority and Underrepresented Student Achievement.

The bill creates a new public records exemption that covers all examinations and assessments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered by an FCS institution, a state university, or the Florida Department of Education. The bill provides that the FCS, Board of Governors of the State University System, and the State Board of Education are responsible for implementing rules or regulations governing access, maintenance, and destruction of the assessments and related records.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill makes legislative findings that the exemptions are necessary in order to:
- Maintain the security of proprietary information included in assessment instruments.
- Prevent cheating, plagiarism, and academic dishonesty in education.

[32] Section 1002.69, F.S.
[33] Section 1003.52, F.S.
[34] Section 1003.56, F.S.
[35] Section 1007.25, F.S.
[36] Section 1007.35(5), F.S.

- Ensure the validity of the results derived from the administration of examinations and assessments.
- Maintain the state's ability to objectively assess educational progress and performance
- Protect a student's privacy and his or her ability to protect his or her personal information and educational records.

The bill provides that the public records exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

The bill takes effect July 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 bill creating or expanding an exemption to the public records requirements. This bill creates a new exemption for records relating to certain examinations and assessments, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to:

- Maintain the security of proprietary information included in assessment instruments.
- Prevent cheating, plagiarism, and academic dishonesty in education.
- Ensure the validity of the results derived from the administration of examinations and assessments.
- Maintain the state's ability to objectively assess educational progress and performance.

- Protect a student's privacy and his or her ability to protect his or her personal information and educational records.

This bill exempts from public inspection and copying requirements only examinations and assessments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered by a Florida College System institution, a state university, or the Florida Department of Education. 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:

The test security requirements in the bill for postsecondary and K-12 assessments may have a positive fiscal impact associated with preventing the compromise of test items, which requires a redevelopment of test items. Additionally, it will likely strengthen the Department of Education's ability to collect damages from entities charged and convicted of such violations and theft.[37]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[37] Florida Department of Education, *2021 Agency Legislative Bill Analysis of SB 1456* (Jan. 22, 2021), at 3.

VIII. Statutes Affected:

This bill substantially amends section 1008.23 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.

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

By Senator Rodrigues

27-01058B-21 20211456__

A bill to be entitled

An act relating to public records; amending s. 1008.23, F.S.; expanding an exemption from public records requirements for examination and assessment instruments used for statewide standardized assessments and student progression to include those instruments used for statewide kindergarten screening, youth enrolled in Department of Juvenile Justice programs, limited English proficient students, civic literacy assessments, measuring minority and underrepresented student achievement, and certification of educators and those administered by a Florida College System institution, a state university, or the Department of Education; providing that provisions governing access, maintenance, and destruction of certain instruments and related materials shall be prescribed by rules of the State Board of Education and regulations of the Board of Governors, respectively; providing for future legislative review and repeal of the exemption; providing legislative findings; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 1008.23, Florida Statutes, is amended to read:

1008.23 Confidentiality of assessment instruments.—

(1) All examination and assessment instruments, including

27-01058B-21 20211456__

developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to ss. 1002.69, 1003.52, 1003.56, 1007.25, 1007.35, 1008.22, ~~and~~ 1008.25, and 1012.56 shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution ~~the provisions of s. 119.07(1) and from s. 1001.52~~. Provisions governing access, maintenance, and destruction of such instruments and related materials shall be prescribed by rules of the State Board of Education.

(2)(a) All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered by a Florida College System institution, a state university, or the Department of Education shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Provisions governing access, maintenance, and destruction of the instruments and related materials identified under paragraph (a) shall be prescribed by rules of the State Board of Education and regulations of the Board of Governors, respectively.

(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, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution examination and assessment instruments used for statewide kindergarten

screening, youth enrolled in Department of Juvenile Justice programs, limited English proficient students, civic literacy assessments, measuring minority and underrepresented student achievement, and certification of educators and those administered by a Florida College System institution, a state university, or the Department of Education.

(2) The state has historically protected education records from public disclosure. Section 1002.221, Florida Statutes, makes K-12 education records generally confidential, while s. 1008.23, Florida Statutes, as it is currently written, already makes examination and assessment instruments relating to statewide, standardized assessments and student progression confidential.

(3) Assessment instruments contain proprietary information that must be protected to maintain the security of such information. In addition, examination and assessment instruments must be protected to prevent cheating, plagiarism, and academic dishonesty in education and to ensure the validity of the results derived from the administration of examinations and assessments.

(4) The state's ability to objectively assess educational progress and performance is impaired if examination and assessment instruments can be publicly disseminated before or after being administered. Public dissemination of already-administered examination and assessment instruments may also invade a student's privacy and harm his or her ability to protect his or her personal information and educational records.

(5) Based on the foregoing, the Legislature finds that the harm that may result from the release of such examination and

assessment instruments outweighs any public benefit that may be derived from the disclosure of the information.

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

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

April 7, 2021

The Honorable Kathleen Passidomo
Senate Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1456 – Public Records/Examination and Assessment Instruments

Dear Madame Chair:

Please allow this letter to serve as my respectful request to place SB 1456, relating Public Records/ Examination and Assessment Instruments, on the next committee agenda.

SB 1456 empowers the Florida Department of Education, the State Board of Education, and the Board of Governors, respectively, amending s. 1008.23 F.S to shield examination and testing material from sunshine state law public disclosure requirement in s.119.07(1), F.S./ protecting test confidentiality and secure student academic progression and records, by public necessity.

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:	SB 1476
INTRODUCER:	Senator Brodeur
SUBJECT:	Controlled Substances
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Favorable**
2.	Looke	Brown	HP	**Favorable**
3.	Erickson	Phelps	RC	**Favorable**

I. Summary:

SB 1476 amends s. 893.03, F.S., which contains Florida's controlled substance schedules, to remove the following substance from Schedule V: a drug product in finished dosage formulation which has been approved by the U.S. Food and Drug Administration (FDA) and which contains cannabidiol (CBD) derived from cannabis and no more than 0.1 percent tetrahydrocannabinols.

In 2019, the Legislature placed the previously-described language in Schedule V. From that time to the present date, the scheduling language has only applied to Epidiolex®, the first pharmaceutical oral solution containing highly purified CBD to be approved by the FDA. It is used for the treatment of seizures associated with two rare and severe forms of epilepsy. While making Epidiolex® a Schedule V controlled substance was consistent with the federal scheduling in 2019, the substance has since been descheduled by the U.S. Drug Enforcement Administration (DEA). Therefore, the bill's removal of the Schedule V language (and the descheduling of Epidiolex®) would be consistent with federal descheduling action.

The bill takes effect upon becoming a law.

II. Present Situation:

Florida's Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"[1] of the substance and whether there is a

[1] Pursuant to s. 893.035(3)(a), F.S., "potential for abuse" means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that

currently accepted medical use for the substance. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

Prescribing and Dispensing a Schedule V Controlled Substance

A prescriber[2] or dispenser[3] of controlled substances in Florida is required to consult the state's Prescription Drug Monitoring Program (PDMP) system each time a controlled substance is prescribed or dispensed to a patient age 16 or over unless a statutory exemption applies.[4] A dispenser is required to report to the PDMP each time a controlled substance, including a controlled substance in Schedule V, is dispensed to a patient.[5] Willful and knowing failure to report the dispensing of a controlled substance is a first degree misdemeanor.[6]

Numerous pieces of information are required to appear on the face or written record of the prescription for a controlled substance[7] and the prescription must be retained by the prescribing pharmacy for two years.[8] There are also numerous labeling requirements relating to the container in which a controlled substance is delivered.[9] There are also limitations on filling or refilling a

create a hazard to the user's health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user's own initiative rather than on the basis of professional medical advice.

[2] A "prescriber" is a prescribing physician, prescribing practitioner, or other prescribing health care practitioner authorized by the laws of this state to order controlled substances. Section 893.055(1)(k), F.S.

[3] A "dispenser" is a dispensing health care practitioner, pharmacy, or pharmacist licensed to dispense controlled substances in or into this state. Section 893.055(1)(e), F.S.

[4] Section 893.055(8), F.S.

[5] Section 893.055(3), F.S. Schedule I substances are not included because, by definition, a Schedule I substance has no accepted medical use, and therefore, is not prescribed or dispensed.

[6] Section 893.055(9), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.

[7] Section 893.04(1)(c), F.S.

[8] Section 893.04(1)(d), F.S.

[9] Section 893.04(1)(d), F.S.

prescription for a controlled substance: no more than five times within a period of six months after the date on which the prescription was written unless the prescription is renewed by a practitioner.[10]

Punishment of Prohibited Drug Acts Involving Cannabis and Schedule V Controlled Substances

Cannabis is a Schedule I controlled substance.[11] Schedule I is the most restrictive controlled substance schedule. Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, delivery, and importation of a Schedule I controlled substance. Simple possession of 20 grams or less of cannabis is a first degree misdemeanor,[12] and simple possession of more than 20 grams of cannabis is a third degree felony.[13] Purchase, or possession with intent to purchase, cannabis is a third degree felony.[14] Delivery, without consideration, of 20 grams or less of cannabis is a first degree misdemeanor.[15] Generally, it is a third degree felony to deliver, sell, manufacture, import, or possess with the intent to sell, manufacture, or deliver cannabis.[16] Section 893.135, F.S., punishes drug trafficking. Trafficking in significant quantities of cannabis is a first degree felony, which is subject to a three, seven, or 15-year mandatory minimum term and mandatory fine based on the quantity of cannabis trafficked.[17]

Schedule V is the least restrictive controlled substance schedule. Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, delivery, and importation of a Schedule V controlled substance. Simple possession of a Schedule V controlled substance is a second degree misdemeanor.[18] Purchase, or possession with intent to purchase, a Schedule V controlled substance is a first degree misdemeanor.[19] Generally, it is a first degree misdemeanor to deliver, sell, manufacture, import, or possess with the intent to sell, manufacture, or deliver a Schedule V controlled substance.[20] Drug trafficking offenses in s. 893.135, F.S., do not apply to Schedule V controlled substances.[21]

[10] Section 893.04(1)(g), F.S.
[11] Section 893.03(1)(c)7., F.S.
[12] Section 893.13(6)(b), F.S.
[13] Section 893.13(6)(a), 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.
[14] Section 893.13(2)(a)2., F.S.
[15] Section 893.13(3), F.S.
[16] Section 893.13(1)(a)2. and (5)(b), F.S.
[17] Section 893.135(1)(a), F.S. 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.
[18] Section 893.13(6)(d), F.S. 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.
[19] Section 893.13(2)(a)3., F.S.
[20] Section 893.13(1)(a)3. and (5)(c), F.S.
[21] *See* s. 893.135(1)(a)-(n), F.S.

Scheduling of Epidiolex®

Epidiolex® is an oral solution developed by GW Pharmaceuticals (GW).[22] According to GW, Epidiolex® is "a pharmaceutical formulation of highly purified cannabidiol (CBD)[.]"[23] CBD is "a chemical constituent of the cannabis plant (commonly referred to as marijuana)."[24] "However, CBD does not cause intoxication or euphoria (the 'high') that comes from tetrahydrocannabinol (THC)."[25]

In June of 2018, the FDA announced that it approved Epidiolex® for the treatment of seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome, in patients two years of age and older.[26] Epidiolex® "is the first FDA-approved drug that contains a purified drug substance derived from marijuana."[27]

On September 28, 2018, the DEA rescheduled Epidiolex® from Schedule I to Schedule V of the federal Controlled Substance Act (CSA).[28] Because Epidiolex® was approved by the FDA, the DEA determined it has a currently accepted medical use in treatment in the United States, and no longer met criteria for placement in Schedule I of the CSA.[29] Epidiolex® was a Schedule I substance under federal law because it contains CBD, a chemical component of the cannabis plant, which is a Schedule I controlled substance.[30]

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[22] *EPIDIOLEX® (cannabidiol) Oral Solution – the First FDA-approved Plant-derived Cannabinoid Medicine – Now Available by Prescription in the U.S*., Press Release (Nov. 1, 2018), GW Pharmaceuticals, Ltd., *available at* http://ir.gwpharm.com/news-releases/news-release-details/epidiolexr-cannabidiol-oral-solution-first-fda-approved-plant (last visited March 25, 2021). According to GW, Epidiolex® "will be marketed in the U.S. by its subsidiary, Greenwich Biosciences." *Id*.

[23] *FDA-approved drug Epidiolex placed in schedule V of Controlled Substance Act*, Press Release (Sept. 27, 2018), U.S. Drug Enforcement Administration, *available at* https://www.dea.gov/press-releases/2018/09/27/fda-approved-drug-epidiolex-placed-schedule-v-controlled-substance-act (last visited March 25, 2021).

[24] *Id*.

[25] *FDA approves first drug comprised of an active ingredient derived from marijuana to treat rare, severe forms of epilepsy*, News Release (June 25, 2018), U.S. Food and Drug Administration, *available at* https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm611046.htm (last visited March 25, 2021).

[26] *Id*.

[27] *Id*.

[28] *Schedules of Controlled Substances: Placement in Schedule V of Certain FDA-Approved Drugs Containing Cannabidiol; Corresponding Change to Permit Requirements*, 83 FR 48950 (Sept. 28, 2018), *available at* https://www.federalregister.gov/documents/2018/09/28/2018-21121/schedules-of-controlled-substances-placement-in-schedule-v-of-certain-fda-approved-drugs-containing (last visited March 25, 2021). The U.S. Department of Health and Human Services advised the DEA "that it found the Epidiolex formulation to have a very low potential for abuse[.]" *Id*. The federal Controlled Substance Act is codified at 21 U.S.C. ss. 801-978.

[29] *Id*.

[30] *Id*.

On October 31, 2018, former Florida Attorney General Pam Bondi, pursuant to her emergency scheduling authority under s. 893.0355, F.S.,[31] rescheduled Epidiolex® from Schedule I of the Florida controlled substance schedules (s. 893.03, F.S.) to Schedule V of the schedules.[32]

In 2019, the Legislature placed the following language in Schedule V: "a drug product in finished dosage formulation which has been approved by the U.S. Food and Drug Administration (FDA) and which contains cannabidiol (CBD) derived from cannabis and no more than 0.1 percent tetrahydrocannabinols."[33] From that time to the present date, the scheduling language has only applied to Epidiolex®.

In 2020, the DEA removed Epidiolex® from Schedule V and descheduled it entirely, meaning Epidiolex® is no longer subject to the federal CSA.[34] Epidiolex® remains a Schedule V controlled substance in Florida's controlled substance schedules until or unless the Legislature removes the scheduling language applicable to Epidiolex®.

"Low-THC Cannabis" and Epidiolex®

The Compassionate Medical Cannabis Act of 2014[35] legalized "low-THC cannabis," a low THC and high CBD form of cannabis,[36] for medical use[37] by patients suffering from cancer, epilepsy, and certain other specified medical conditions.[38]

A "low-THC cannabis" product obtained from a medical marijuana treatment center is not an FDA-approved CBD product. As previously described, Epidiolex® is the only CBD product that is currently approved by the FDA. Further, Epidiolex® is *prescribed* by a physician. A "low-

[31] Section 893.0355(2), F.S., delegates to the Attorney General the authority to adopt rules rescheduling specified substances to a less controlled schedule, or deleting specified substances from a schedule, upon a finding that reduced control of such substances is in the public interest. Rulemaking under s. 893.0355, F.S., must be in accordance with the procedural requirements of ch. 120, F.S., including the emergency rule provisions found in s. 120.54, F.S., except that s. 120.54(7), F.S. (petition to initiate rulemaking), does not apply. Section 893.0355(4), F.S.

[32] The text of Emergency Rule 2ER18-1 *available at* https://www.flrules.org/gateway/notice_Files.asp?ID=21109642 (last visited March 25, 2021).

[33] Section 893.03(5)(d), F.S.

[34] *See Implementation of the Agriculture Improvement Act of 2018* (interim final rule), Drug Enforcement Administration, 85 FR 51639 (Aug. 21, 2020), *available at* https://www.federalregister.gov/documents/2020/08/21/2020-17356/implementation-of-the-agriculture-improvement-act-of-2018 (last visited March 25, 2021). The interim final rule, in part, removed "from control in schedule V under 21 CFR 1308.15(f) a "drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols." *Id.* "… [I]nterim final rules are considered final rules that carry the force and effect of law." Todd Gravey, *A Brief Overview of Rulemaking and Judicial Review* (March 27, 2017), Congressional Research Service, at p. 9 and n. 79 (citing *Career College Ass'n v. Riley*, 74 F.3d 1265 (D.C. Cir. 1996)), *available at* https://fas.org/sgp/crs/misc/R41546.pdf. (last visited March 25, 2021). *See also* prescription information for Epidiolex® (on file with the Senate Committee on Criminal Justice).

[35] *See* ch. 2014-157, Laws of Fla., and s. 381.986, F.S.

[36] "Low-THC cannabis" means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed from a medical marijuana treatment center. Section 381.986(1)(e), F.S.

[37] With specified exceptions, "medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. Section 381.986(1)(j), F.S.

[38] Section 381.986(2), F.S.

THC cannabis" product is not prescribed. In addition to other requirements, a *physician certification* from a qualified physician is required for a qualified patient to obtain a "low-THC cannabis" product from a medical marijuana treatment center.[39]

Epidiolex® was subject to extensive clinical and non-clinical studies to determine its safety and efficacy for the treatment of Lennox-Gastaut syndrome and Dravet syndrome in patients two years of age and older.[40] In contrast, a "low-THC cannabis" product dispensed by a medical marijuana treatment center is tested by a medical marijuana testing laboratory to determine that the product meets the definition of "low-THC cannabis," the THC concentration meets the potency requirements of s. 381.986, F.S., the labeling of the concentration of THC and CBD is accurate, and the product is safe for human consumption and free from contaminants that are unsafe for human consumption.[41]

"Low-THC cannabis" described in s. 381.986(1)(e), F.S., is still cannabis, and cannabis is a Schedule I controlled substance. As previously described, unlawful acts involving a Schedule I controlled substance are generally subject to significant criminal penalties. However, when a qualified patient lawfully obtains "low-THC cannabis" (as provided in s. 381.986, F.S.), he or she is not subject to criminal penalties.[42] In contrast, as previously described, Epidiolex® is a Schedule V controlled substance pursuant to Florida law, and unlawful acts involving a Schedule V controlled substance are punished less severely than unlawful acts involving a Schedule I controlled substance.

III. Effect of Proposed Changes:

The bill amends s. 893.03, F.S., which contains Florida's controlled substance schedules, to remove the following substance from Schedule V: a drug product in finished dosage formulation which has been approved by the FDA and which contains CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols. This drug product is referenced in s. 893.03(5)(d), F.S. The bill also amends the definition of "cannabis," which is relevant to ch. 893, F.S., to remove a sentence in the definition that currently states that the term "cannabis" does not include a drug product described in s. 893.03(5)(d), F.S.

In 2019, the Legislature placed the previously-described language relevant to Epidiolex® in Schedule V. From that time to the present date, the scheduling language has only applied to Epidiolex®, the first pharmaceutical oral solution containing highly purified CBD to be approved by the FDA. It is used for the treatment of seizures associated with two rare and severe forms of epilepsy. While making Epidiolex® a Schedule V controlled substance was consistent with the federal scheduling in 2019, the substance has since been descheduled by the DEA, and

[39] Section 381.986(2)-(8), F.S.
[40] *See* footnote 23, *supra*.
[41] Section 381.986(8)(e)10.d., F.S.
[42] Notwithstanding s. 893.13, F.S., s. 893.135, F.S., s. 893.147, F.S., or any other provision of law, but subject to the requirements of this section, a qualified patient and the qualified patient's caregiver may purchase from a medical marijuana treatment center for the patient's medical use a marijuana delivery device and up to the amount of marijuana authorized in the physician certification, but may not possess more than a 70-day supply of marijuana at any given time and all marijuana purchased must remain in its original packaging. Section 381.986(14)(a), F.S.

therefore, the bill's removal of the Schedule V language (and the descheduling of Epidiolex®) is consistent with federal scheduling action.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The descheduling of Epidiolex® means that a prescriber would no longer have to consult the PDMP system before prescribing Epidiolex®, and a dispenser would no longer have to report to the PDMP system each time the prescriber dispenses Epidiolex®. Other requirements relating to Schedule V controlled substances (information-reporting, recordkeeping, labeling containers, and filling and refilling prescriptions) would no longer apply.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the bill removes language from Schedule V applicable to Epidiolex®, there is nothing in the bill that would specifically indicate that a drug product in finished dosage formulation which has been approved by the FDA and which contains CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols is not "cannabis" as defined in ch. 893, F.S., or a controlled substance under ch. 893, F.S. It is possible that Epidiolex® fits under the definition of "hemp" in s. 581.217, F.S., and as such would not be a controlled substance pursuant to s. 581.217(2)(b), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.03 and 893.02.

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.

706830

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2021	.	
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The Committee on Rules (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 12 - 25
and insert:
Section 1. Paragraph (c) of subsection (1) and paragraph (d) of subsection (5) of section 893.03, Florida Statutes, are amended to read:
893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual,

706830

chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, homologues, nitrogen-heterocyclic analogs, esters, ethers, and salts of isomers, homologues, nitrogen-heterocyclic analogs, esters, or ethers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation or class description:

1. Alpha-Ethyltryptamine.

2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-oxazoline).

3. Aminorex (2-Amino-5-phenyl-2-oxazoline).

4. DOB (4-Bromo-2,5-dimethoxyamphetamine).

5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).

706830

6. Bufotenine.

7. Cannabis, except if it is contained within a pharmaceutical product approved by the United States Food and Drug Administration.

8. Cathinone.

9. DET (Diethyltryptamine).

10. 2,5-Dimethoxyamphetamine.

11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).

12. DMT (Dimethyltryptamine).

13. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog of phencyclidine).

14. JB-318 (N-Ethyl-3-piperidyl benzilate).

15. N-Ethylamphetamine.

16. Fenethylline.

17. 3,4-Methylenedioxy-N-hydroxyamphetamine.

18. Ibogaine.

19. LSD (Lysergic acid diethylamide).

20. Mescaline.

21. Methcathinone.

22. 5-Methoxy-3,4-methylenedioxyamphetamine.

23. PMA (4-Methoxyamphetamine).

24. PMMA (4-Methoxymethamphetamine).

25. DOM (4-Methyl-2,5-dimethoxyamphetamine).

26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).

27. MDA (3,4-Methylenedioxyamphetamine).

28. JB-336 (N-Methyl-3-piperidyl benzilate).

29. N,N-Dimethylamphetamine.

30. Parahexyl.

31. Peyote.

706830

32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine analog of phencyclidine).

33. Psilocybin.

34. Psilocyn.

35. *Salvia divinorum*, except for any drug product approved by the United States Food and Drug Administration which contains *Salvia divinorum* or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

36. Salvinorin A, except for any drug product approved by the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

37. Xylazine.

38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene analog of phencyclidine).

39. 3,4,5-Trimethoxyamphetamine.

40. Methylone (3,4-Methylenedioxymethcathinone).

41. MDPV (3,4-Methylenedioxypyrovalerone).

42. Methylmethcathinone.

43. Methoxymethcathinone.

44. Fluoromethcathinone.

45. Methylethcathinone.

46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol) and its dimethyloctyl (C8) homologue.

47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-


706830

methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol].

48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).

51. BZP (Benzylpiperazine).

52. Fluorophenylpiperazine.

53. Methylphenylpiperazine.

54. Chlorophenylpiperazine.

55. Methoxyphenylpiperazine.

56. DBZP (1,4-Dibenzylpiperazine).

57. TFMPP (Trifluoromethylphenylpiperazine).

58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).

59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).

60. 5-Hydroxy-N-methyltryptamine.

61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).

62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).

63. Methyltryptamine.

64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).

65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).

66. Tyramine (4-Hydroxyphenethylamine).

67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).

68. DiPT (N,N-Diisopropyltryptamine).

69. DPT (N,N-Dipropyltryptamine).

70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).

71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).

72. DOI (4-Iodo-2,5-dimethoxyamphetamine).

73. DOC (4-Chloro-2,5-dimethoxyamphetamine).



74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
81. Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).
82. Ethcathinone.
83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
84. Naphyrone (Naphthylpyrovalerone).
85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
86. 3,4-Methylenedioxy-N,N-diethylcathinone.
87. 3,4-Methylenedioxy-propiophenone.
88. 3,4-Methylenedioxy-alpha-bromopropiophenone.
89. 3,4-Methylenedioxy-propiophenone-2-oxime.
90. 3,4-Methylenedioxy-N-acetylcathinone.
91. 3,4-Methylenedioxy-N-acetylmethcathinone.
92. 3,4-Methylenedioxy-N-acetylethcathinone.
93. Bromomethcathinone.
94. Buphedrone (alpha-Methylamino-butyrophenone).
95. Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).
96. Dimethylcathinone.
97. Dimethylmethcathinone.
98. Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).
99. MDPPP (3,4-Methylenedioxy-alpha-

706830

pyrrolidinopropiophenone).

100. MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).

101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).

103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).

104. F-MABP (Fluoromethylaminobutyrophenone).

105. MeO-PBP (Methoxypyrrolidinobutyrophenone).

106. Et-PBP (Ethylpyrrolidinobutyrophenone).

107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).

108. Me-EABP (Methylethylaminobutyrophenone).

109. Etizolam.

110. PPP (Pyrrolidinopropiophenone).

111. PBP (Pyrrolidinobutyrophenone).

112. PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).

113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).

114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

706830

124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).
132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).
133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).
135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).
136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).
141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-


706830

naphthalenylmethanone).

142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

143. Pentedrone (alpha-Methylaminovalerophenone).

144. Fluoroamphetamine.

145. Fluoromethamphetamine.

146. Methoxetamine.

147. Methiopropamine.

148. Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).

149. APB ((2-Aminopropyl)benzofuran).

150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).

151. UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

155. AM-2233(1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).

156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

157. URB-597 ((3′-(Aminocarbonyl)[1,1′-biphenyl]-3-yl)-cyclohexylcarbamate).

158. URB-602 ([1,1′-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester).

159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-

706830

benzoxazin-4-one).

160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

161. 2C-H (2,5-Dimethoxyphenethylamine).

162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

165. MDMA (3,4-Methylenedioxymethamphetamine).

166. PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

167. Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

168. BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

169. Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).



177. FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).

182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol).

185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-tetrahydro-6aH-benzo[c]chromen-1-ol).

186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).

187. MAPB ((2-Methylaminopropyl)benzofuran).

188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

190. Synthetic Cannabinoids.—Unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and

706830

Drug Administration, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical class descriptions, or homologues, nitrogen-heterocyclic analogs, isomers (including optical, positional, or geometric), esters, ethers, salts, and salts of homologues, nitrogen-heterocyclic analogs, isomers, esters, or ethers, whenever the existence of such homologues, nitrogen-heterocyclic analogs, isomers, esters, ethers, salts, and salts of isomers, esters, or ethers is possible within the specific chemical class or designation. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or the compounds of these structures shall be included under this subparagraph, regardless of their specific numerical designation of atomic positions covered, if it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

a. Tetrahydrocannabinols.—Any tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis*, the synthetic equivalents of the substances contained in the plant or in the resinous extracts of the genus *Cannabis*, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including, but not limited to, Delta 9 tetrahydrocannabinols and their optical isomers, Delta 8 tetrahydrocannabinols and their optical isomers, Delta 6a,10a tetrahydrocannabinols and their optical isomers, or any compound containing a tetrahydrobenzo[c]chromene structure with substitution at either or both the 3-position or

706830

9-position, with or without substitution at the 1-position with hydroxyl or alkoxy groups, including, but not limited to:

(I) Tetrahydrocannabinol.

(II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(X) Parahexyl.

b. Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylindoles, Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylindole, naphthylmethylindazole, or naphthylmethylcarbazole structure, with or without substitution on the indole, indazole, or



carbazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

(II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-naphthoyl)indole).

(III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

(IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

(V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

(VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

(VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

(VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

(IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

(X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

(XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

(XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

(XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

(XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole).

(XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

(XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

(XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-naphthoyl)indole).

(XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).

(XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

(XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).

(XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).

(XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-naphthylmethyl]indole).

(XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-



naphthoyl)indole).

(XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-naphthoyl)indole).

(XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).

(XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).

(XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).

(XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

(XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).

(XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).

(XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-naphthoyl)indole).

(XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-naphthoyl)indole).

(XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).

(XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-naphthoyl)indole).

(XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-naphthoyl)indole).

(XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).

(XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

(XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-naphthoyl)indole).

(XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-naphthoyl)indole).

(XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).

(XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-



naphthoyl)carbazole).

c. Naphthoylpyrroles.—Any compound containing a naphthoylpyrrole structure, with or without substitution on the pyrrole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).

(II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).

(III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-naphthoyl)pyrrole).

(VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-naphthoyl)pyrrole).

(X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-naphthoyl)pyrrole).

d. Naphthylmethylenindenes.—Any compound containing a naphthylmethylenindene structure, with or without substitution at the 3-position of the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to, JWH-176 (3-Pentyl-1-(naphthylmethylene)indene).

e. Phenylacetylindoles and Phenylacetylindazoles.—Any compound containing a phenylacetylindole or phenylacetylindazole structure, with or without substitution on the indole or

706830

indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).

(II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

(III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

(IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).

(V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).

(VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

(VII) Cannabipiperidiethanone.

(VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).

f. Cyclohexylphenols.—Any compound containing a cyclohexylphenol structure, with or without substitution at the 5-position of the phenolic ring to any extent, whether or not substituted on the cyclohexyl ring to any extent, including, but not limited to:

(I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol).

(II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8) homologue).

(III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-methyloctan-2-yl)phenol).

g. Benzoylindoles and Benzoylindazoles.—Any compound containing a benzoylindole or benzoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

(II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

706830

(III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodo-5-nitrobenzoyl)indole).

(IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole).

(V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).

(VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

(VII) RCS-4 C4 homologue (1-Butyl-3-(4-methoxybenzoyl)indole).

(VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-3-(4-methoxybenzoyl)indole).

h. Tetramethylcyclopropanoylindoles and Tetramethylcyclopropanoylindazoles.—Any compound containing a tetramethylcyclopropanoylindole or tetramethylcyclopropanoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the tetramethylcyclopropyl group to any extent, including, but not limited to:

(I) UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-



tetramethylcyclopropanoyl)indole).

(VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indazole).

(IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole carboxamides, and Adamantylindazole carboxamides.—Any compound containing an adamantoyl indole, adamantoyl indazole, adamantyl indole carboxamide, or adamantyl indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent, including, but not limited to:

(I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

(II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

(III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

(IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-adamantoyl)indole).

(V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

(VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

(VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-adamantoyl)indole).

j. Quinolinylindolecarboxylates, Quinolinylindazolecarboxylates, Quinolinylindolecarboxamides,

706830

and Quinolinylindazolecarboxamides.—Any compound containing a quinolinylindole carboxylate, quinolinylindazole carboxylate, isoquinolinylindole carboxylate, isoquinolinylindazole carboxylate, quinolinylindole carboxamide, quinolinylindazole carboxamide, isoquinolinylindole carboxamide, or isoquinolinylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the quinoline or isoquinoline ring to any extent, including, but not limited to:

(I) PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

(II) Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

(III) BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

(IV) FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) NPB-22 (8-Quinolinyl 1-pentylindazole-3-carboxylate).

(VI) Fluoro NPB-22 (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxylate).

(VII) FUB-NPB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indazole-3-carboxylate).

(VIII) THJ (8-Quinolinyl 1-pentylindazole-3-carboxamide).

(IX) Fluoro THJ (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxamide).

k. Naphthylindolecarboxylates and Naphthylindazolecarboxylates.—Any compound containing a naphthylindole carboxylate or naphthylindazole carboxylate structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the



naphthyl ring to any extent, including, but not limited to:

(I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-carboxylate).

(II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-carboxylate).

(III) Fluoro SDB-005 (1-Naphthalenyl 1-(fluoropentyl)indazole-3-carboxylate).

(IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-carboxylate).

l. Naphthylindole carboxamides and Naphthylindazole carboxamides.—Any compound containing a naphthylindole carboxamide or naphthylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

(II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

(III) Chloro-NNEI (N-Naphthalen-1-yl 1-(chloropentyl)indole-3-carboxamide).

(IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-carboxamide).

(V) Fluoro MN-18 (N-Naphthalen-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl indazole carboxamides, Alkylcarbonyl indole carboxylates, and Alkylcarbonyl indazole carboxylates.—Any compound containing an



alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an indole carboxamide, indazole carboxamide, indole carboxylate, or indazole carboxylate, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the alkylcarbonyl group to any extent, including, but not limited to:

(I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-

706830

(cyclohexylmethyl)indazole-3-carboxamide).

(XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

(XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indole-3-carboxamide).

(XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide).

(XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

n. Cumylindolecarboxamides and Cumylindazolecarboxamides.—Any compound containing a N-(2-phenylpropan-2-yl) indole carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide structure, with or without substitution on the indole or



indazole ring to any extent, whether or not substituted on the phenyl ring of the cumyl group to any extent, including, but not limited to:

(I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

o. Other Synthetic Cannabinoids.—Any material, compound, mixture, or preparation that contains any quantity of a Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

(I) With or without modification or replacement of a carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage between either two core rings, or linkage between a core ring and group structure, with or without the addition of a carbon or replacement of a carbon;

(II) With or without replacement of a core ring or group structure, whether or not substituted on the ring or group structures to any extent; and

(III) Is a cannabinoid receptor agonist, unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

191. Substituted Cathinones.—Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical



706830

designations:

a. Any compound containing a 2-amino-1-phenyl-1-propanone structure;

b. Any compound containing a 2-amino-1-naphthyl-1-propanone structure; or

c. Any compound containing a 2-amino-1-thiophenyl-1-propanone structure,

whether or not the compound is further modified:

(I) With or without substitution on the ring system to any extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy, haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide substituents;

(II) With or without substitution at the 3-propanone position with an alkyl substituent or removal of the methyl group at the 3-propanone position;

(III) With or without substitution at the 2-amino nitrogen atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system; or

(IV) With or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

(A) Methcathinone.

(B) Ethcathinone.

(C) Methylone (3,4-Methylenedioxymethcathinone).

(D) 2,3-Methylenedioxymethcathinone.

(E) MDPV (3,4-Methylenedioxypyrovalerone).

(F) Methylmethcathinone.

(G) Methoxymethcathinone.



(H) Fluoromethcathinone.

(I) Methylethcathinone.

(J) Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).

(K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).

(L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).

(M) Naphyrone (Naphthylpyrovalerone).

(N) Bromomethcathinone.

(O) Buphedrone (alpha-Methylaminobutyrophenone).

(P) Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).

(Q) Dimethylcathinone.

(R) Dimethylmethcathinone.

(S) Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).

(T) Pentedrone (alpha-Methylaminovalerophenone).

(U) MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).

(V) MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).

(W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).

(X) PPP (Pyrrolidinopropiophenone).

(Y) PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).

(Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

(AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).

(BB) F-MABP (Fluoromethylaminobutyrophenone).

(CC) Me-EABP (Methylethylaminobutyrophenone).

(DD) PBP (Pyrrolidinobutyrophenone).


706830

(EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).

(FF) Et-PBP (Ethylpyrrolidinobutyrophenone).

(GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).

(HH) Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).

(II) 3,4-Methylenedioxy-N,N-diethylcathinone.

(JJ) 3,4-Methylenedioxy-N-acetylcathinone.

(KK) 3,4-Methylenedioxy-N-acetylmethcathinone.

(LL) 3,4-Methylenedioxy-N-acetylethcathinone.

(MM) Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).

(NN) Methyl-alpha-methylaminohexanophenone.

(OO) N-Ethyl-N-methylcathinone.

(PP) PHP (Pyrrolidinohexanophenone).

(QQ) PV8 (Pyrrolidinoheptanophenone).

(RR) Chloromethcathinone.

(SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.

192. Substituted Phenethylamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure, without a beta-keto group, and without a benzyl group attached to the amine group, whether or not the compound is further modified with or without substitution on the phenyl ring to any extent with alkyl, alkylthio, nitro, alkoxy, thio,

706830

halide, fused alkylenedioxy, fused furan, fused benzofuran, fused dihydrofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha or beta position by any alkyl substituent, with or without substitution at the nitrogen atom, and with or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
j. 2C-H (2,5-Dimethoxyphenethylamine).
k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
m. MDMA (3,4-Methylenedioxymethamphetamine).
n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).
o. MDA (3,4-Methylenedioxyamphetamine).
p. 2,5-Dimethoxyamphetamine.
q. Fluoroamphetamine.
r. Fluoromethamphetamine.
s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
u. DOC (4-Chloro-2,5-dimethoxyamphetamine).

706830

v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).
w. DOI (4-Iodo-2,5-dimethoxyamphetamine).
x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
y. PMA (4-Methoxyamphetamine).
z. N-Ethylamphetamine.
aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
cc. PMMA (4-Methoxymethamphetamine).
dd. N,N-Dimethylamphetamine.
ee. 3,4,5-Trimethoxyamphetamine.
ff. 4-APB (4-(2-Aminopropyl)benzofuran).
gg. 5-APB (5-(2-Aminopropyl)benzofuran).
hh. 6-APB (6-(2-Aminopropyl)benzofuran).
ii. 7-APB (7-(2-Aminopropyl)benzofuran).
jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).
ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-dihydrobenzofuran),

which does not include phenethylamine, mescaline as described in subparagraph 20., substituted cathinones as described in subparagraph 191., N-Benzyl phenethylamine compounds as

706830

described in subparagraph 193., or methamphetamine as described in subparagraph (2)(c)5.

193. N-Benzyl Phenethylamine Compounds.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure without a beta-keto group, with substitution on the nitrogen atom of the amino group with a benzyl substituent, with or without substitution on the phenyl or benzyl ring to any extent with alkyl, alkoxy, thio, alkylthio, halide, fused alkylenedioxy, fused furan, fused benzofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha position by any alkyl substituent, including, but not limited to:

a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).


706830

f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

q. 25H-NBOH (2,5-Dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

r. 25H-NBF (2,5-Dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine),

706830

which does not include substituted cathinones as described in subparagraph 191.

194. Substituted Tryptamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a 2-(1H-indol-3-yl)ethanamine, for example tryptamine, structure with or without mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups, or by inclusion of the amino nitrogen atom in a cyclic structure, whether or not substituted at the alpha position with an alkyl group, whether or not substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, including, but not limited to:

a. Alpha-Ethyltryptamine.
b. Bufotenine.
c. DET (Diethyltryptamine).
d. DMT (Dimethyltryptamine).
e. MET (N-Methyl-N-ethyltryptamine).
f. DALT (N,N-Diallyltryptamine).
g. EiPT (N-Ethyl-N-isopropyltryptamine).
h. MiPT (N-Methyl-N-isopropyltryptamine).
i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
j. 5-Hydroxy-N-methyltryptamine.
k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
m. Methyltryptamine.
n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).


706830

p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
q. DiPT (N,N-Diisopropyltryptamine).
r. DPT (N,N-Dipropyltryptamine).
s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-isopropyltryptamine).
z. Methyl-alpha-ethyltryptamine.
aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

which does not include tryptamine, psilocyn as described in subparagraph 34., or psilocybin as described in subparagraph 33.

195. Substituted Phenylcyclohexylamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a phenylcyclohexylamine structure, with or without any substitution on the phenyl ring, any substitution on the cyclohexyl ring, any replacement of the phenyl ring with a thiophenyl or benzothiophenyl ring, with or without substitution on the amine with alkyl, dialkyl, or alkoxy substituents, inclusion of the nitrogen in a cyclic structure, or any combination of the above, including, but not limited to:

a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).

706830

b. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).

c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine)(Pyrrolidine analog of phencyclidine).

d. PCPr (Phenylcyclohexylpropylamine).

e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)(Thiophene analog of phencyclidine).

f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).

g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).

h. Methoxetamine.

i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).

j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).

k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).

l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).

m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).

n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).

o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).

p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).

q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).

r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide.

197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]-benzenesulfonamide.

198. AH-7921, 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]-benzamide.

199. U47700, trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide.

200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine,


706830

dihydrochloride.

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

And the title is amended as follows:

Delete line 3

and insert:

893.03, F.S.; excluding from Schedule I cannabis if it is contained within a pharmaceutical product approved by the United States Food and Drug Administration; removing from Schedule V certain drug

By Senator Brodeur

9-01009A-21 20211476__

A bill to be entitled

An act relating to controlled substances; amending s. 893.03, F.S.; removing from Schedule V certain drug products in finished dosage formulation which have been approved by the United States Food and Drug Administration; amending s. 893.02, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Paragraph (d) of subsection (5) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(5) SCHEDULE V.—A substance, compound, mixture, or preparation of a substance in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United

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

9-01009A-21 20211476__

States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

~~(d) A drug product in finished dosage formulation that has been approved by the United States Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.~~

Section 2. Subsection (3) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(3) "Cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include "marijuana," as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986. The term does not include hemp as defined in s. 581.217 or industrial hemp as defined in s. 1004.4473. ~~The term does not include a drug product described in s. 893.03(5)(d).~~

Section 3. 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 31, 2021

I respectfully request that **Senate Bill 1476**, relating to **Controlled Substances**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (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/SB 1934
INTRODUCER:	Rules Committee and Senators Book and Taddeo
SUBJECT:	Health Care Practitioner Discipline
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	**Favorable**
2.	Siples	Jones	CJ	**Favorable**
3.	Rossitto Van-Winkle	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1934:

- Amends s. 456.072, F.S., to add to the list of offenses that are grounds for disciplinary action against the license of a health care practitioner regulated by the Department of Health (DOH), for:
  - Being convicted, found guilty, pleading guilty, or pleading nolo contendere, regardless of adjudication, to any of the crimes listed in s. 456.074(5), F.S., as amended; or
  - Attempting, soliciting, or conspiring to commit an act that would constitute a crime listed in s. 456.074(5), F.S., or similar crime in another jurisdiction.
- Amends s. 456.074(1), F.S., to add homicide to list of offenses that require the DOH to issue an Emergency Suspension Order (ESO) and broadens the application to any health care practitioner, instead of those currently listed in statute, if he or she pleads guilty to, is convicted or found guilty of, or who enter pleads nolo contendere to, regardless of adjudication.
- Amends s. 456.074(2), F.S., to specify offenses that require the DOH to issue an ESO against any health care practitioner who is arrested for such offenses. The bill requires the DOH to issue an ESO if a health care practitioner is arrested for committing or attempting, soliciting, or conspiring to commit any one of the listed criminal offenses involving a child, an individual with mental or physical disabilities, or the elderly, or a similar offense in another jurisdiction.

- Directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to analyze state laws and rules relating to grounds for health care practitioner discipline and ESOs of licenses, specifically with respect to criminal offenses, and to report to Executive and Legislative Branch leadership by January 1, 2022.

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

II. Present Situation:

The Department of Health

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

- Acupuncturists;[4]
- Allopathic physicians, physician assistants, anesthesiologist assistants, and medical assistants;[5]
- Osteopathic physicians, physician assistants, and anesthesiologist assistants;[6]
- Chiropractic physicians and physician assistants;[7]
- Podiatric physicians;[8]
- Naturopathic physicians;[9]
- Optometrists;[10]
- Autonomous advanced practice registered nurses, advanced practice registered nurses, registered nurses, licensed practical nurses, and certified nursing assistants;[11]
- Pharmacists, pharmacy interns, and pharmacy technicians;[12]
- Dentists, dental hygienists, and dental laboratories;[13]
- Midwives;[14]
- Speech and language pathologists;[15]
- Audiologists;[16]

[1] Section 20.43(1), F.S.
[2] Under s. 456.001(1), F.S., "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH MQA.
[3] Section 20.43(3)(g), F.S.
[4] Chapter 457, F.S.
[5] Chapter 458, F.S.
[6] Chapter 459, F.S.
[7] Chapter 460, F.S.
[8] Chapter 461, F.S.
[9] Chapter 462, F.S.
[10] Chapter 463, F.S.
[11] Chapter 464, F.S.
[12] Chapter 465, F.S.
[13] Chapter 466, F.S.
[14] Chapter 467, F.S.
[15] Part I, ch. 468, F.S.
[16] *Id.*

- Occupational therapists and occupational therapy assistants;[17]
- Respiratory therapists;[18]
- Dieticians and nutritionists;[19]
- Athletic trainers;[20]
- Orthotists, prosthetists, and pedorthists;[21]
- Electrologists;[22]
- Massage therapists;[23]
- Clinical laboratory personnel;[24]
- Medical physicists;[25]
- Opticians;[26]
- Hearing aid specialists;[27]
- Physical therapists;[28]
- Psychologists and school psychologists;[29] and
- Clinical social workers, mental health counselors, and marriage and family therapists.[30]

Disciplinary Proceeding under Chapters 456 and 120, F.S.

Section 456.072, F.S., enumerates at least 43 specific acts that constitute grounds for disciplinary action against licensed health care practitioners in Florida. In addition, each health care practitioner's respective practice act contains specific statutory provisions on prohibited acts, disciplinary actions, grounds for discipline, and actions by the applicable board.

The DOH, on behalf of the boards, investigates any complaint that is filed against a health care practitioner if the complaint is:

- In writing;
- Signed by the complainant;[31] and
- Legally sufficient.[32]

A complaint is legally sufficient if it contains allegations of ultimate facts that, if true, show that a regulated practitioner has violated:

[17] Part III, ch. 468, F.S.
[18] Part V, ch. 468, F.S.
[19] Part X, ch. 468, F.S.
[20] Part XIII, ch. 468, F.S.
[21] Part XIV, ch. 468, F.S.
[22] Chapter 478, F.S.
[23] Chapter 480, F.S.
[24] Part II, ch. 483, F.S.
[25] Part III, ch. 483, F.S.
[26] Part I, ch. 484, F.S.
[27] Part II, ch. 484, F.S.
[28] Chapter 486, F.S.
[29] Chapter 490, F.S.
[30] Chapter 491, F.S.
[31] Section 456.073(1), F.S. The DOH may also investigate an anonymous complaint, or that of a confidential informant, if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true.
[32] *Id*.

- Chapter 456, F.S.;
- His or her practice act; or
- A rule of his or her board or the DOH.[33]

The Consumer Services Unit receives the complaints and refers them to the closest Investigative Services Unit (ISU) office. The ISU investigates complaints against health care practitioners.[34] Complaints that present an immediate threat to public safety are given priority; however, all complaints are investigated as timely as possible. When the complaint is assigned to an investigator, the complainant will be contacted and given the opportunity to provide additional information. A thorough investigation will be conducted. The steps taken in the investigation are determined by the specifics of the allegations, but generally include the following:

- Obtaining medical records, documents, and evidence;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses; and
- Drafting and serving subpoenas for necessary information.[35]

The ISU includes a staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders for the DOH.[36]

The PSU is responsible for providing legal services to the DOH in the regulation of all health care boards and councils.[37] The PSU will review the investigative file and report from ISU and recommend a course of action to the State Surgeon General (when an immediate threat to the health, safety, and welfare of the people of Florida exists), the appropriate board's probable cause panel, or the DOH, if there is no board, which may include:

- Having the file reviewed by an expert;
- Issuing a closing order (CO);
- Filing an administrative complaint (AC); or
- Issuing an emergency order (ERO or ESO).[38]

If the ISU investigative file received by the PSU does not pose an immediate threat to the health, safety, and welfare of the people of Florida, then the PSU attorneys review the file and determine, first, whether expert review is required and, then, whether to recommend to the board's probable cause panel:

- A CO;
- An AC; or

[33] *Id.*
[34] Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, *Investigative Services, available at* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html (last visited March 18, 2021).
[35] *Id*.
[36] *Id.*
[37] Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, *Prosecution Services, available at* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html (last visited March 18, 2021).
[38] *Id*.

- A Letter of Guidance (LOG).[39,40]

A CO is recommended if the investigation and/or the expert opinion does not support the allegation(s). The subject and the complainant are notified of the results. The complainant may appeal the decision within sixty (60) days of notification by providing additional information for consideration. Cases closed with no finding of probable cause are confidential and are not available through a public records request.[41]

An AC is recommended when the investigation and/or the expert opinion supports the allegation(s). The subject is entitled to a copy of the complete case file prior to the probable cause panel meeting. When an AC is filed with the agency clerk, the subject has the right to choose one of the following options:

- *An Administrative Hearing Involving Disputed Issues of Material Fact* – The subject disputes the facts in the AC and elects to have a hearing before the Division of Administrative Hearings (DOAH). If this occurs, all parties may be asked to testify and the administrative law judge will issue a recommended order that will then go to the board or the DOH for final agency action.
- *A Settlement/Stipulation/Consent Agreement* – The subject enters into an agreement to be presented before the board or the DOH. Terms of this agreement may impose penalties negotiated between the subject or the subject's attorney and the DOH's attorney.
- *A Hearing Not Involving Disputed Issues of Material Fact* – The subject of the AC does not dispute the facts. The subject elects to be heard before the board or the DOH. At that time, the subject will be permitted to give oral and/or written evidence in mitigation or in opposition to the recommended action by the DOH.
- *Voluntary Relinquishment of License* – The subject of the AC may elect to surrender his or her license and to cease practice.[42]

Final DOH action, including all of the above, as well as cases where the subject has failed to respond to an AC, are presented before the applicable board, or the DOH if there is no board. The subject may be required to appear. The complainant is notified of the date and location of the hearing and may attend. If the subject is entitled to, and does, appeal the final decision, PSU defends the final order before the appropriate appellate court.[43]

If the ISU investigative file received by the PSU presents evidence of an immediate threat to the health, safety, and welfare of the people of Florida, then the PSU will present the file to the State Surgeon General and recommend one of two types of emergency orders – ESO or ERO – which are exclusively issued by the State Surgeon General against licensees who pose such a threat to the people of Florida.[44]

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[39] Section 456.073(2), F.S. The DOH may recommend a LOG in lieu of finding probable cause if the subject has not previously been issued a LOG for a related offense.
[40] *Id.*
[41] *Supra* note 39.
[42] *Id.*
[43] *Supra* note 36.
[44] Sections 456.073(8) and 120.60(6), F.S.

Whether the State Surgeon General issues an ERO or an ESO depends on the level of danger the licensee presents, because the DOH is permitted to use only the "least restrictive means" to stop the danger.[45] The distinction between the two orders is:

- ESOs – Licensees are deemed to be a threat to the public at large; or
- EROs – Licensees are considered a threat to a segment of the population.[46]

The emergency order process, which restricts someone's right to work, is carried out without a hearing, and when the order is served on the licensee, it must contain a notice to the licensee of his or her right to an immediate appeal of the emergency order.[47] An ESO or ERO is not considered final agency action, and the DOH must file an AC on the underlying facts supporting the ESO or ERO within 20 days of its issuance.[48] The appeal of the emergency order and the normal disciplinary process under the AC, and regular prosecution can run simultaneously.[49]

Mandatory EROs and ESOs

Section 456.074, F.S., directs that in certain cases, the DOH must issue an ESO or ERO to certain license practitioners under certain circumstances, specifically:

- If any of the following practitioners have plead guilty to, been convicted of, found guilty of, or have entered a plea of nolo contendere to, regardless of adjudication, certain offenses related to Medicare fraud, Medicaid fraud, health care fraud, controlled substances, or reproductive battery, they are subject to an ESO by the State Surgeon General:
  - Allopathic physician, physician assistants, anesthesiologist assistants, and medical assistants;
  - Osteopathic physician, physician assistants, and anesthesiologist assistants;
  - Chiropractic physician and physician assistants;
  - Podiatric physicians;
  - Naturopathic physicians;
  - Optometrists;
  - Autonomous advanced practice registered nurses, advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistants;
  - Pharmacists and pharmacy technicians;
  - Dentists, dental hygienist, and dental laboratories; and
  - Opticians;[50]

- The DOH may issue an ESO or ERO if the Board of Medicine (BOM) or Board of Osteopathic Medicine (BOOM) has previously found one of its physicians has committed

[45] Section 120.60(6)(b), F.S.
[46] Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, Prosecution Services, *A Quick Guide to the MQA Disciplinary Process Discretionary Emergency Orders – 3 Things to Know, available at* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/_documents/a-quick-guide-to-the-mqa-disciplinary-process-discrtionary-emergency-orders.pdf (last visited March 18, 2021).
[47] *See* Fla. Admin. Code R. 28-106.501(3) (2020), and ss. 120.569(2)(n) and 120.60(6), F.S.
[48] Fla. Admin. Code R. 28-106.501(3) (2020).
[49] Section 120.60(6)(c), F.S.
[50] Section 456.074(1), F.S.

medical malpractice,[51] gross medical malpractice, or repeated medical malpractice,[52] and the probable cause panel again finds probable cause for another malpractice violation. In such cases, the State Surgeon General must review the matter to determine if an ESO or ERO is warranted;[53]

- The DOH may issue an ESO or ERO if any practitioner governed by ch. 456, F.S., tests positive for any drug on any government or private sector pre-employment or employer-ordered confirmed drug test,[54] when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug;[55]
- The DOH must issue an ESO if it receives information that a massage therapist, a person with an ownership interest in the establishment, or a massage corporate establishment corporation whose owners, officers, or individual are directly involved in the management of the establishment, has been convicted of, found guilty of, or has entered a guilty or nolo contendere plea to, regardless of adjudication, a felony under any of the following crimes anywhere, relating to:[56]
  - Prostitution;[57]
  - Kidnapping;[58]
  - False imprisonment;[59]
  - Luring or enticing a child;[60]
  - Human trafficking;[61]
  - Human smuggling;[62]
  - Sexual battery;[63]
  - Female genital mutilation;[64]
  - Procuring a person under 18 for prostitution;[65]
  - Selling or buying of minors into prostitution;[66]
  - Forcing, compelling, or coercing another to become a prostitute;[67]

[51] Section 456.50(1)(g), F.S., "Medical malpractice" means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in law related to health care licensure.
[52] *Id.* "Repeated medical malpractice" is medical malpractice, and any similar wrongful act, neglect, or default committed in another state or country which, if committed in this state, would have been considered medical malpractice, and will be considered medical malpractice, if the standard of care and burden of proof applied in the other state or country equaled or exceeded that used in this state.
[53] Section 456.074(2), F.S.
[54] Section 112.0445, F.S., defines a "confirmed drug test" as a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, and must be different in scientific principle than the initial drug test.
[55] Section 456.074(3), F.S. The practitioner must be given 48 hours from the time of notification of the confirmed test results to produce a lawful prescription for the drug before an emergency order is issued.
[56] Section 456.074(4), F.S.
[57] Section 796.07(1)(a), F.S. "Prostitution" means the giving or receiving of the body for sexual activity for hire, but excludes sexual activity between spouses. Prostitution that took place at a massage establishment is reclassified to the next higher degree. *See* s. 796.07(2)(a), F.S., which is reclassified under s. 796.07(7), F.S.
[58] Section 787.01, F.S.
[59] Section 787.02, F.S.
[60] Section 787.025, F.S.
[61] Section 787.06, F.S.
[62] Section 787.07, F.S.
[63] Section 794.011, F.S.
[64] Section 794.08, F.S.
[65] Former s. 796.03, F.S.
[66] Former s. 796.035, F.S.
[67] Section 796.04, F.S.

- Deriving support from the proceeds of prostitution;[68]
- Prohibiting prostitution and related acts;[69]
- Lewd or lascivious offenses committed upon or in the presence of persons under 16;[70]
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;[71]
- Sexual performance by a child;[72]
- Protection of minors;[73]
- Computer pornography;[74]
- Transmission of material harmful to minors, to a minor by electronic device or equipment;[75] and
- Selling or buying of minors.[76]

- The DOH must issue an ESO if a BOM or BOOM probable cause panel determines that the following constitutes a violation of the practice act and there exists an immediate danger to the public:[77]
  - The registered surgery office where office surgery level liposuction, or Level II or Level III office surgeries are being performed; or the physician practicing in the office, are not in compliance with the standards of practice for office surgery set by statute and board rule;[78] or
  - The physician is practicing beyond the scope of his or her education, training and experience, and performing procedures the licensee knows, or has reason to know, that he or she is not competent to perform.[79,80]

III. Effect of Proposed Changes:

The bill:

- Amends s. 456.072, F.S., to add to the list of offenses that are grounds for disciplinary action against the license of a health care practitioner regulated by the DOH. The bill adds the following to that list: being convicted or found guilty of, entering a plea of guilty or nolo contendere to, regardless of adjudication, or committing or attempting, soliciting, or conspiring to commit an act that would constitute a violation of any of the offenses listed in s. 456.074(5), F.S., or a similar offense in another jurisdiction.
- Amends s. 456.074(1), F.S., to apply to any health care practitioner, instead of those currently specified in statute, and adds to the listed offenses a felony under ch. 782, F.S., relating to homicide for which the DOH is required to issue an ESO if the practitioner pleads

[68] Section 796.05, F.S.
[69] Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S.
[70] Section 800.04, F.S.
[71] Section 825.1025(2)(b), F.S.
[72] Section 827.071, F.S.
[73] Section 847.0133, F.S.
[74] Section 847.0135, F.S.
[75] Section 847.0138, F.S.
[76] Section 847.0145, F.S.
[77] Section 456.074(5), F.S
[78] *Id*. and Fla. Admin. Code Rs. 64B8-9.009 and 64B15-14.007 (2020).
[79] Sections 458.331(1)(v) and 459.015(1)(z), F.S.
[80] Section 456.074(5), F.S.

guilty to, is convicted or found guilty of, or who enter pleas of nolo contendere to, regardless of adjudication.

- Creates a new subsection (5) of s. 456.074, F.S., to require the DOH to issue an ESO against the license of any health care practitioner who is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses involving a child in Florida or similar offenses in another jurisdiction:
  - Sexual misconduct against an individual with a developmental disability;[81]
  - Sexual misconduct against a patient of a receiving or treatment facility or in the custody of the Department of Children and Families;[82]
  - Kidnapping;[83]
  - False imprisonment;[84]
  - Luring or enticing a child;[85]
  - Human trafficking for commercial sexual activity;[86]
  - Human trafficking of a child under five for commercial sexual activity;[87]
  - Human smuggling;[88]
  - Sexual battery, excluding a person charged with falsely accusing certain individuals of sexual battery;[89]
  - Unlawful sexual activity with certain minors;[90]
  - Female genital mutilation;[91]
  - Procuring a person under age 18 for prostitution;[92]
  - Selling or buying of minors into prostitution;[93]
  - Forcing, compelling, or coercing another to become a prostitute;[94]
  - Deriving support from the proceeds of prostitution;[95]
  - Prohibiting prostitution and related acts;[96]
  - Lewd or lascivious offenses committed upon or in the presence of persons under age 16;[97]
  - Video voyeurism of a minor;[98]
  - Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;[99]

[81] Section 393.135(2), F.S.
[82] Section 394.4593(2), F.S,
[83] Section 787.01, F.S.
[84] Section 787.02, F.S.
[85] Section 787.025(2), F.S.
[86] Section 787.06(3)(b),(d), (f), or (g), F.S.
[87] Former s. 787.06(3)(h), F.S.
[88] Section 787.07, F.S.
[89] Section 794.011, F.S.
[90] Section 794.05, F.S.
[91] Section 794.08, F.S.
[92] Former s. 796.03, F.S.
[93] Former s. 796.035, F.S.
[94] Section 796.04, F.S.
[95] Section 796.05, F.S.
[96] Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S.
[97] Section 800.04, F.S.
[98] Section 810.145(8), F.S.
[99] Section 825.1025, F.S.

- Sexual performance by a child;[100]
- Performing prohibited acts in connection with obscene, lewd, and other materials;[101]
- Selling, renting, loaning, for monetary consideration, materials harmful to minors, using a minor in the production of such material, or distributing such material to a minor in certain locations;[102]
- Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations;[103]
- Selling, renting, loaning, giving away, distributing, transmitting, or showing any obscene material to a minor;[104]
- Computer pornography, prohibited computer usage, or traveling to meet minors, excluding owners or operators of computer services;[105]
- Transmission of child pornography by electronic device or equipment;[106]
- Transmission of material harmful to minors to a minor by electronic device or equipment;[107]
- Selling or buying of minors;[108]
- Loitering or prowling in close proximity to children;[109]
- Racketeering activity;[110]
- Sexual misconduct against a forensic client of a civil or forensic facility for defendants who have a mental illness or an intellectual disability;[111]
- Sexual misconduct against a juvenile offender;[112] and
- Any similar offense committed in this state which has been re-designated from a former statute number to one of those listed above.

- Section 3 of the bill directs the OPPAGA to analyze Florida's laws and rules relating to grounds for health care practitioner discipline and immediate suspension of licenses, specifically with respect to criminal offenses, and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2022. The analysis must identify all health care professions regulated by the DOH, and for each profession:
  - Indicate all sections of the Florida Statutes, and related rules, that subject practitioners to discipline or an ESO of his or her license;
  - Identify which criminal offenses are specifically listed as grounds for disciplinary action or a ESO suspending a practitioner's license, distinguishing whether the DOH may take such action upon a health care practitioner's arrest for the criminal offense or conduct or only if the health care practitioner is found guilty or convicted of, or enters a plea of nolo contendere to, the criminal offense;

[100] Section 827.071, F.S.
[101] Section 847.011, F.S.
[102] Section 847.012, F.S.
[103] Section 847.013, F.S.
[104] Section 847.0133, F.S.
[105] Sections 847.0135, and 847.0135(6), F.S.
[106] Section 847.0137, F.S.
[107] Section 847.0138, F.S.
[108] Section 847.0145, F.S.
[109] Section 856.022, F.S.
[110] Section 895.03, F.S., if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subsection or at least one offense listed in this subsection which was committed with sexual intent or motive.
[111] Section 916.1075(2), F.S.
[112] Section 985.701(1), F.S.

- Compare all of the information obtained and determine:
  - Whether there are disparities between the professions as to which criminal offenses are grounds for disciplinary action or grounds for an ESO; and
  - Whether there are disparities between the disciplinary guidelines adopted by the boards or the DOH for the different professions;
- Review historical disciplinary action data from the DOH, including all of the disciplinary actions taken or immediate suspensions issued by the DOH for a health care practitioner's arrest for, conviction of, or entering a plea to a criminal offense, and identifying the types of offenses and details of the corresponding disciplinary action taken, if any; and
- To the extent possible, determine how many health care practitioners in the past 10 years (or in prior years if older data are available) have been arrested for, been convicted of, or have entered a plea to a criminal offense listed in s. 456.074(5), F.S., as amended by the bill, and, for such practitioners, determine how many have had administrative complaints filed or disciplinary action taken against their license or have had their license immediately suspended by the DOH for such arrest, conviction, or criminal plea, noting the final disposition of their case with the DOH, if any; and;
- Compare all of the information obtained under the analysis and determine if Florida's current laws and rules, relating to discipline and ESOs of practitioners licenses, are creating discrepancies relating to practitioners who are arrested for, convicted of, or entering pleas to criminal offenses, that pose a danger to the health, safety, and welfare of the public, but are not being subjected to disciplinary action or ESOs of their licenses.

- Requires that, upon the OPPAGA's request, all state agencies must assist the OPPAGA in its analysis and preparation of the report, including, but not limited to, providing technical assistance and any relevant information or data the OPPAGA requests.

The bill repeals the authority for the OPPAGA report on January 2, 2022.

The bill 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:

The DOH estimates a significant workload increase under the bill, creating the need for 31 full-time equivalent (FTE) staff and $2,154,496 in total costs, including $2,011,129 recurring costs. These costs for the DOH MQA are associated with suspending licensees through the issuance of emergency orders based upon arrests.[113]

The MQA trust fund may have sufficient revenue in the future to support these costs; however, the current SB 2500 first engrossed for Fiscal Year 2021-2022 does not include any additional FTE or budget to support the bill's requirements.

The bill might also result in increased expenses borne by the OPPAGA to cover the costs associated with producing the report required under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

To potentially give the OPPAGA more time to conduct the analysis required under section 3 of the bill, an amendment should be considered to make that section effective upon the bill becoming law.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.072 and 456.074.

This bill creates a non-statutory section of the Laws of Florida.

[113] Florida Department of Health, Senate Bill 1934 Agency Fiscal Analysis of Amendment 171240 (on file with Senate Committee on Rules).

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 April 16, 2021:
The CS:

- Adds homicide to the list of offenses that require the DOH to issue an ESO and broadens the application to any health care practitioner, not only those currently listed in statute, if a practitioner pleads guilty to, is convicted or found guilty of, or who enter pleads nolo contendere to, regardless of adjudication.
- Adds lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person to offenses that require the DOH to issue an ESO if a practitioner is arrested for such offenses and broadens the application to include any health care practitioner, instead of those listed in 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.

By the Committee on Rules; and Senators Book and Taddeo

595-04298-21 20211934c1

A bill to be entitled

An act relating to health care practitioner discipline; amending s. 456.072, F.S.; subjecting health care practitioners to disciplinary action for specified offenses; amending s. 456.074, F.S.; revising provisions relating to immediate suspension of licensure to apply to all health care practitioners; requiring the Department of Health to issue emergency orders to suspend health care practitioners' licenses if they enter a criminal plea to, or are convicted or found guilty of, a felony relating to homicide or are arrested for committing or attempting, soliciting, or conspiring to commit acts that would constitute violations of specified criminal offenses; providing an effective date.

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

Section 1. Paragraph (rr) is added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(rr) Being convicted or found guilty of, entering a plea of guilty or nolo contendere to, regardless of adjudication, or committing or attempting, soliciting, or conspiring to commit an act that would constitute a violation of any of the offenses listed in s. 456.074(5) or a similar offense in another

595-04298-21 20211934c1

jurisdiction.

Section 2. Present subsection (5) of section 456.074, Florida Statutes, is redesignated as subsection (6), a new subsection (5) is added to that section, and subsection (1) of that section is amended, to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(1) The department shall issue an emergency order suspending the license of any health care practitioner ~~person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, or chapter 484~~ who pleads guilty to, is convicted or found guilty of, or ~~who~~ enters a plea of nolo contendere to, regardless of adjudication, any of the following ~~to~~:

(a) A felony under chapter 409, chapter 817, or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.~~;~~

(b) A misdemeanor or felony under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.~~; or~~

(c) A felony under s. 784.086, relating to a reproductive battery.

(d) A felony under chapter 782, relating to homicide.

(5) The department shall issue an emergency order suspending the license of any health care practitioner who is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses in this state or similar

offenses in another jurisdiction:

(a) Section 393.135(2), relating to sexual misconduct with an individual with a developmental disability.

(b) Section 394.4593(2), relating to sexual misconduct with a patient who resides in a receiving or treatment facility or is otherwise in the custody of the Department of Children and Families.

(c) Section 787.01, relating to kidnapping.

(d) Section 787.02, relating to false imprisonment.

(e) Section 787.025(2), relating to luring or enticing a child.

(f) Section 787.06(3)(b), (d), (f), or (g), relating to human trafficking for commercial sexual activity.

(g) Former s. 787.06(3)(h), relating to human trafficking of a child under the age of 15 for commercial sexual activity.

(h) Section 787.07, relating to human smuggling.

(i) Section 794.011, relating to sexual battery, excluding s. 794.011(10).

(j) Section 794.05, relating to unlawful sexual activity with certain minors.

(k) Section 794.08, relating to female genital mutilation.

(l) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.

(m) Former s. 796.035, relating to the selling or buying of minors into prostitution.

(n) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.

(o) Section 796.05, relating to deriving support from the proceeds of prostitution.

(p) Section 796.07(4)(a)3., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(q) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons younger than 16 years of age.

(r) Section 810.145(8), relating to video voyeurism of a minor.

(s) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

(t) Section 827.071, relating to sexual performance by a child.

(u) Section 847.011, relating to prohibited acts in connection with obscene, lewd, and other materials.

(v) Section 847.012, relating to materials harmful to minors.

(w) Section 847.013, relating to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

(x) Section 847.0133, relating to the protection of minors from obscene materials.

(y) Section 847.0135, relating to computer pornography, prohibited computer usage, or traveling to meet minors, excluding s. 847.0135(6).

(z) Section 847.0137, relating to the transmission of child pornography by electronic device or equipment.

(aa) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or

equipment.

(bb) Section 847.0145, relating to the selling or buying of minors.

(cc) Section 856.022, relating to loitering or prowling in close proximity to children.

(dd) Section 895.03, relating to racketeering activity, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subsection or at least one offense listed in this subsection which was committed with sexual intent or motive.

(ee) Section 916.1075(2), relating to sexual misconduct against a forensic client of a civil or forensic facility for defendants who have a mental illness or an intellectual disability.

(ff) Section 985.701(1), relating to sexual misconduct against a juvenile offender.

(gg) Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection.

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

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

From: Simmons, Melinda <Melinda.Simmons@flhealth.gov>
Sent: Thursday, April 15, 2021 6:27:22 PM
To: Johnson, Jeffrey C <Jeffrey.Johnson@flhealth.gov>; Wenhold, Jennifer <Jennifer.Wenhold@flhealth.gov>; Baker, Joe <Joe.Baker@flhealth.gov>
Cc: Love, Andrew <Andrew.Love@flhealth.gov>; Whitten, Mark <Mark.Whitten@flhealth.gov>; Knispel, Matthew L <Matthew.Knispel@flhealth.gov>
Subject: RE: SB 1934

Hi Jeff,

Attached is the fiscal and worksheet for SB 1934.

Thanks,

Mendy Simmons *(ribbon)*
Senior Health Budget Analyst
DOH/MQA/Director's Office
Ph# (850)245-4556
Fax# (850)414-8209
Melinda.Simmons@flhealth.gov

Mission: To protect, promote & improve the health of all people in Florida through integrated state, county, & community efforts.

Please note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

31 FTE will be required to implement the provisions of this bill. Salary is calculated at base of the position plus 43% for fringe benefits.

DOH/MQA will experience a recurring increase in workload and costs associated with suspending licensees through the issuance of emergency orders based upon arrests. Based on FY 2019-20 information from MQA's licensure database, there were approximately 813 cases opened on licensees who were arrested under the statutes outlined in this amendment. Because licensees are not under a statutory obligation to report arrests, the true number of potentially impacted licensees under this amendment is unknown; however, the data from FY19-20 was obtained from the MQA database of known reported cases.

Based on these 813 cases, it is anticipated that 1 FTE can manage a workload of processing 911 incoming complaints (arrest notifications), and 1 FTE can manage a workload of 27 cases for prosecution purposes; therefore, 31 total FTEs are requested for MQA to effectively implement the proposed legislation.

- 1 FTE Investigation Specialist II, no travel,
- 15 FTE Senior Attorneys, no travel, and
- 15 FTE Regulatory Specialist III, no travel is requested

Based on the LBR standards, the total FTE cost is $2,154,496 ($1,818,859/Salary + $325,407/Expense + $10,230/HR).

BILL ANALYSIS WORKSHEET
example

PG 15 & Below Non-professional	FTE	B/W	Annualized Salary Per FTE	Annual Salary	Fringe @ 43.%	Year 1 Total Sal and Fr	25% Lapse	Year 1-if lapsed Adjusted Sal & Fr	Year 2 Total Sal and Fr
	0.00		-	-	-	-	-	-	-
	0.00		-	-	-	-	-	-	-
	0.00		-	-	-	-	-	-	-
Total Non-professional	0.00					-		-	-
PG 16 & Up Professional									
Investigation Specialist II	1.00	1257.57	32,696.82	32,696.82	14,059.63	46,756		46,756	46,756
Senior Attorney	15.00	1985.65	51,626.90	774,403.50	332,993.51	1,107,397		1,107,397	1,107,397
Regulatory Specialist III	15.00	1191.87	30,988.62	464,829.30	199,876.60	664,706		664,706	664,706
Total Professional	31.00					1,818,859		1,818,859	1,818,859
OPS (from OPS worksheet)	0.00			-	-	-		-	
Total Salary and Fringe	31.00					1,818,859		1,818,859	1,818,859
Non-recurring Expense Standard				*FTE*	*Standard*				
Non-professional				-	3,639	-		-	
Professional				31.00	4,429	137,299		137,299	
Total Non-recurring Expense				31.00		137,299		137,299	
Other Non-recurring (need details/explanation-example Computer Software Purchase)						-		-	
Total Non-recurring						137,299		137,299	
Recurring Expense Standard									
Non-professional (no travel)				-	5,107	-		-	-
Professional				31.00	6,068	188,108		188,108	182,040
Total Regular Expense Standard				31.00		188,108		188,108	182,040
Recurring Professional Travel Standard									
Maximum Travel					13,512	-		-	-
Medium Travel					9,606	-		-	-
Limited Travel				-	5,568	-		-	-
Total Recurring Expense Standard for Travel				-		-		-	-
Total Recurring Expense Standard						188,108		188,108	182,040
Other recurring expense (need details/explanation - example TV/Radio/Billboard Advertising)						-		-	-
Total Recurring Expenses						188,108		188,108	182,040
						325,407			
HR Outsourcing (107040)									
FTE				31.00	330	10,230		10,230	10,230
CHD				-	234	-		-	-
OPS				-	107	-		-	
				31.00		10,230		10,230	10,230
Total Recurring						2,017,197		2,017,197	2,011,129
Total Non-recurring & Recurring				Shaded areas are input fields		2,154,496		2,154,496	2,011,129

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 23, 2021

I respectfully request that **Senate Bill 1934**, relating to Health Care Practicioner Discipline, be placed on the next committee agenda.

This important public safety bill would close an important loophole that has allowed for pediatricians convicted of sex crimes involving minors to continue practicing with their license in Florida.

This bill came about after I learned of the arrest of my own children's pediatrician, Dr. Michael Mizrachy. I look forward to urgently addressing this gap in protection by having this bill placed on the agenda.

Thank you for your consideration.

Lauren Book

Senator Lauren Book
Florida Senate, District 32

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 1946
INTRODUCER:	Rules Committee; Community Affairs Committee; Environment and Natural Resources Committee; and Senator Polsky and others
SUBJECT:	Anchoring Limitation Areas
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Fav/CS**
2.	Paglialonga	Ryon	CA	**Fav/CS**
3.	Anderson	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1946 provides that, notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area adjacent to urban areas that have residential docking facilities and significant recreational boating traffic, which meets certain requirements imposed under the bill. The bill provides that the aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's delineated navigable-in-fact waterways.

The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size;
- Not include any mooring field or marina; and
- Be clearly marked with signs and buoys.

The bill prohibits a person from anchoring a vessel for more than 45 consecutive days in a 6-month period in an anchoring limitation area, except under existing exceptions.

The bill requires counties proposing establishment of an anchoring limitation area to provide notice to the Fish and Wildlife Conservation Commission (FWC) 30 days before final adoption of an ordinance. The bill requires FWC to publish notice of the proposed ordinance.

The bill prohibits Monroe County from establishing an anchoring limitation area until the county approves, permits, and opens a specified number of new moorings for public use within 1 mile of the Key West Bight City Dock and within the Key West Garrison Bight Mooring Field. The bill requires FWC to designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels until the county approves, permits, and opens the new moorings.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation on anchoring, upon an inquiry by a law enforcement officer or agency. If the vessel owner or operator fails or refuses to provide such proof, the bill authorizes a law enforcement officer or agency to issue a citation, and later remove and impound the vessel.

A vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to existing procedures for abandoned or lost property and relocation and removal of derelict vessels.

The bill expressly grandfathers-in the geographic areas already designated anchoring limitation areas in Florida Statutes.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Division of Law Enforcement Boating and Waterways Section of the Florida Fish and Wildlife Conservation Commission (FWC) oversees and coordinates statewide regulatory waterway markers to ensure compliance with uniform markers and state boating and resource protection zones for the benefit of all waterway users and fish and wildlife resources in the state.[1] The Boating and Waterways Section takes public input and provides notice of proposed local boating-restricted areas.[2]

FWC's boating laws are enforced by the Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.[3] The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.[4] This includes enforcing boating rules and regulations; coordinating boating safety campaigns and education; managing public waters and access to the

[1] FWC, *Waterway Management*, https://myfwc.com/boating/waterway/ (last visited Mar. 16, 2021).
[2] *Id*.
[3] Section 327.70(1), F.S.; *see* s. 943.10(1), F.S., which defines "law enforcement officer" as 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 of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
[4] Fish and Wildlife Conservation Commission (FWC), *Boating*, https://myfwc.com/boating/ (last visited Mar. 17, 2021).

waters; conducting boating accident investigations; identifying and removing derelict vessels; and investigating vessel theft and title fraud.[5]

FWC has adopted rules to establish and govern a uniform system of regulatory markers for the waters of the state, in conformance with the United States Coast Guard in the United States Aids to Navigation System, 33 C.F.R. part 62.[6] Counties and municipalities which have been granted a designation for a boating-restricted area by FWC are eligible to apply to FWC for permission to place regulatory markers within the boating-restricted area.[7] Only permitted counties and municipalities may place regulatory markers on waters of the state.[8]

Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.[9] Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.[10]

Local Regulation of Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.[11] Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.[12]

[5] FWC, *Law Enforcement*, https://myfwc.com/about/inside-fwc/le/ (last visited Mar. 17, 2021). *See* s. 327.70(1) and (4), F.S.
[6] Sections 327.40 and 327.41, F.S.
[7] Section 327.41, F.S.
[8] Fla. Admin. Code R. 68D-23.
[9] Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
[10] Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), *available at* https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf (last visited Mar. 17, 2021).
[11] *See* s. 373.118, F.S., and Fla. Admin. Code R. 62-330.420(1).
[12] *See* Fla. Admin. Code R. 62-330.420.

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures[13] or live-aboard vessels[14] within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.[15] However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels and non-fishing commercial vessels, outside the marked boundaries of permitted mooring fields.[16]

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.[17] These densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, include:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County; and
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island;
  - San Marino Island and San Marco Island; and
  - San Marco Island and Biscayne Island.[18]

To promote the public's use and enjoyment of these waterways, anchoring a vessel is prohibited at any time between 30 minutes after sunset and 30 minutes before sunrise in an anchoring limitation area.[19] However, there are some exceptions where anchoring is permitted in an anchoring limitation area:

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; or
- During certain special events.[20]

Certain government, construction, and fishing vessels are also exempt from anchoring limitation areas.[21]

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[13] Section 327.02, F.S., defines the term "floating structure" as a "floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such."
[14] Section 327.02, F.S., defines the term "live-aboard vessel" as "a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats."
[15] Section 327.60(3), F.S.
[16] Section 327.60(2)(f), F.S.
[17] Section 327.4108(1), F.S.
[18] *Id*.
[19] Section 327.4108(2), F.S.
[20] Section 327.4108(3), F.S.; *see also* s. 327.48, F.S.
[21] Section 327.4108(4), F.S.

Law enforcement officers or agencies may remove and impound, for up to 48 hours, vessels from anchoring limitation areas when a vessel operator who was previously issued a citation:

- Continues to anchor the vessel in an anchoring limitation area within 12 hours of being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.[22] In addition to the civil penalty imposed by a citation, a vessel operator whose vessel has been impounded must pay all of the applicable removal and storage fees before the vessel is released.[23]

An owner or operator of a vessel who anchors in an anchoring limitation area commits a noncriminal infraction and is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- $50 for a first offense;
- $100 for a second offense; and
- $250 for a third or subsequent offense.[24]

Section 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of $500 and no more than 60 days imprisonment.[25]

Procedures for Lost or Abandoned Property

When an article of lost or abandoned property is present on public property and is not easily removable, the law enforcement officer must place a notice of removal on the property. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner and must mail a copy of the notice to the owner.[26]

If, after 5 days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.[27] An owner that does not remove his or her property is liable for the costs of removal, storage, and destruction of the property, less any salvage value.[28] If the property is sold, the agency must deposit the balance of any proceeds, less the costs of transportation, storage, and notice, into an interest-bearing account no later than 30 days after the date of the sale.[29] The proceeds must be held for one year and the property owner is entitled to claim the balance of the proceeds by making application to the agency.[30]

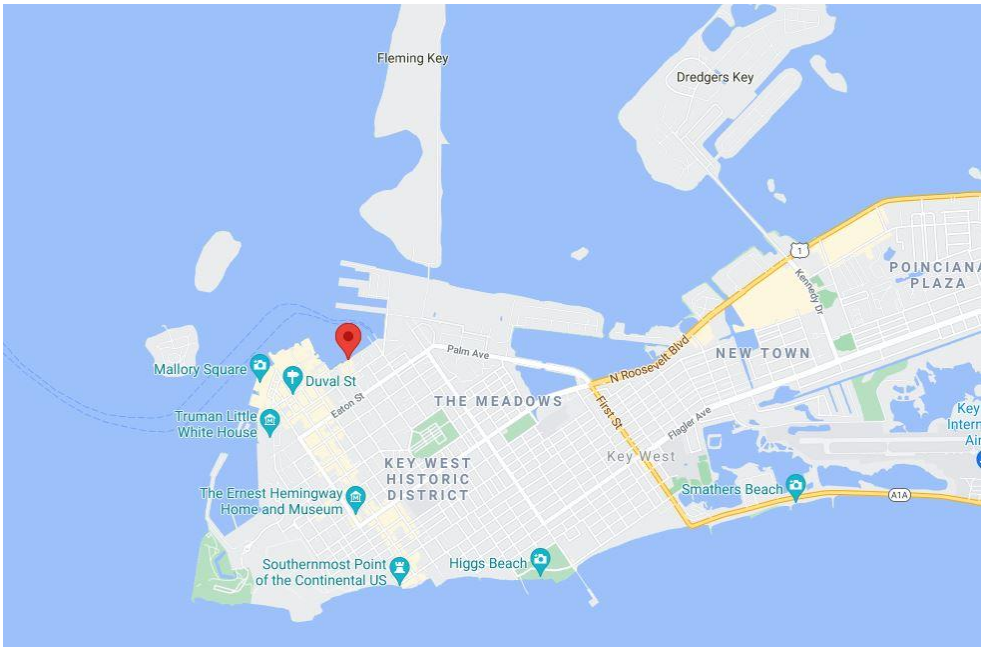
[22] Section 327.4108(5), F.S.
[23] *Id*.
[24] Section 327.73(1)(z), F.S.
[25] Sections 775.082 and 775.083, F.S.
[26] Section 705.103(2), F.S.
[27] *Id*.
[28] Section 705.103(4), F.S.
[29] Section 705.103(3), F.S.
[30] *Id*.

Relocation or Removal of Derelict Vessels

Section 823.11, F.S., allows for the relocation or removal of a derelict vessel[31] from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner.[32] A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.[33]

Key West Bight City Dock

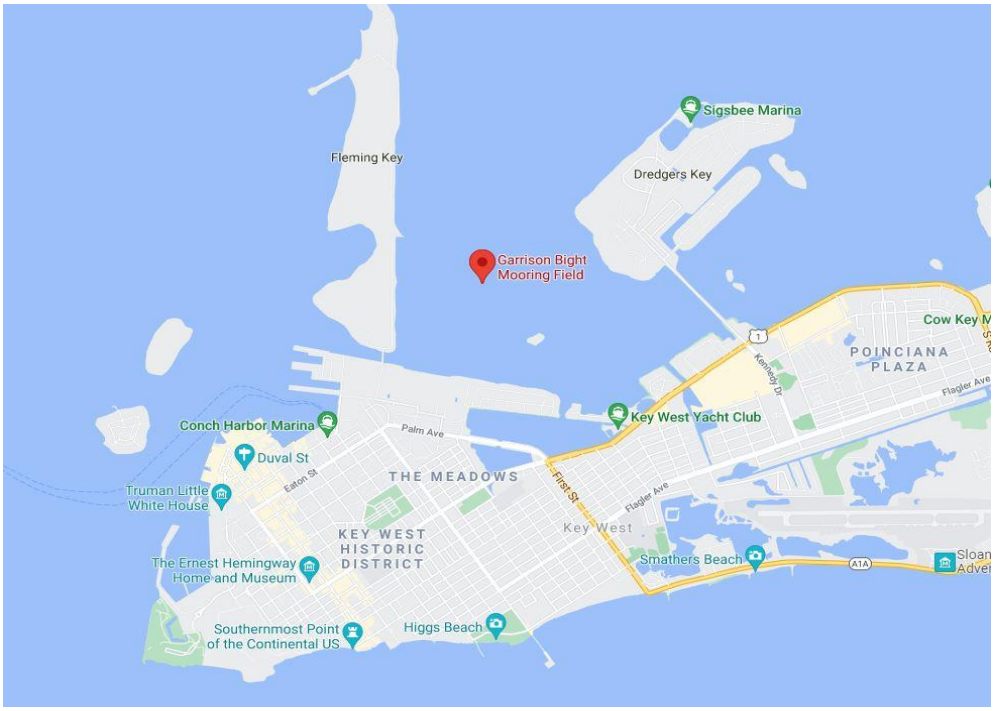
The Key West Bight City Dock is located on the Palm Avenue Causeway in Garrison Bight.



Key West Garrison Bight Mooring Field

The Key West Garrison Bight Mooring Field is located between Fleming Key and Sigsbee Park.

[31] A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property. Section 823.11(1)(b), F.S.
[32] Section 823.11(3), F.S.
[33] *Id*.; *see* s. 705.103(4), F.S.



III. Effect of Proposed Changes:

The bill amends s. 327.4108, F.S., to provide that notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area adjacent to urban areas that have residential docking facilities and significant recreational boating traffic. The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's delineated navigable-in-fact waterways.

The bill defines "navigable-in-fact waterways" to mean:

> Waterways that are navigable in their natural or unimproved condition over which useful commerce or public recreation of a substantial and permanent character is or may be conducted in the customary mode of trade and travel on water. The term does not include lakes or streams that are theoretically navigable; have a potential for navigability; or are temporary, precarious, and unprofitable, but the term does include lakes or streams that have practical usefulness to the public as highways for transportation.

Each anchoring limitation area must meet certain requirements imposed under the bill. The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size. The bill provides that the calculated size of the anchoring limitation area does not include any portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring limitation area;
- Not include any mooring field or marina; and
- Be clearly marked with all of the following:

- Signs that provide reasonable notice to boaters which identify the duration of time beyond which anchoring is limited and identify the county ordinance by which the anchoring limitation area was created.
- Buoys marking the boundary of the anchoring limitation area.

The signs and buoys required under the bill must be permitted and installed in accordance with statutory provisions for uniform waterway markers and Fish and Wildlife Conservation Commission (FWC) rules.

The bill prohibits a person from anchoring a vessel for more than 45 consecutive days in a 6-month period in an anchoring limitation area established under the bill.

The bill requires a county that proposes to establish an anchoring limitation area to provide notice to FWC 30 days before final adoption of an ordinance establishing an anchoring limitation area. The bill requires FWC to publish notice of the proposed ordinance on its website and distribute notice through FWC's Boating and Waterways Section e-mail distribution list for ordinances.

The bill prohibits Monroe County from establishing an anchoring limitation area until the county approves, permits, and opens new moorings for public use, including:
- At least 250 moorings within 1 mile of the Key West Bight City Dock; and
- At least 50 moorings within the Key West Garrison Bight Mooring Field.

The bill requires FWC to designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels until a county approves, permits, and opens these new moorings.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation (a maximum of 45 days in a 6-month period) on anchoring in an anchoring limitation area, upon an inquiry by a law enforcement officer or agency. Such proof may include either documentation or electronic evidence, including, but not limited to, navigational devices or tracking devices, which shows that the vessel was in another location at least one mile away from the anchoring limitation area within a period of less than 45 days before the inquiry.

If the vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the time limitation (a maximum of 45 days in a 6-month period) on anchoring, the bill authorizes a law enforcement officer or agency to issue a citation for a violation of the anchoring limitation area. The law enforcement officer or agency is authorized remove and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator has been issued a citation for anchoring and does one of the following:
- Anchors the vessel in an anchoring limitation area within 12 hours after being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

The bill declares that a vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to the procedures for lost and abandoned property and for derelict vessels, the procedures for relocation and removal of derelict vessels.

The bill deletes an obsolete provision tied to FWC's pilot program for regulation of mooring vessels outside of public mooring fields.

The bill reenacts s. 327.73(1)(z), F.S., which provides penalties for violations of anchoring limitation areas, to incorporate the changes made by the bill to s. 327.4108, F.S.

The bill expressly grandfathers-in the geographic areas already designated anchoring limitation areas in statute.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 327.4108 and 327.73 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on April 16, 2021:

- Authorizes new anchoring limitation areas adjacent to certain urban areas.
- Limits the total anchoring limitation areas in a county to a specified portion of a county's delineated navigable-in-fact waterways.
- Defines the term "navigable-in-fact waterways."
- Prohibits the inclusion of a marina in an anchoring limitation area.
- Deletes the requirement that subjects an ordinance establishing a new anchoring limitation area to review and approval by the Fish and Wildlife Conservation Commission (FWC).
- Requires that the signs and buoys required to mark an anchoring limitation area be permitted and installed in accordance with the statutory requirements for uniform waterway markers and FWC rules.
- Increases the time in which a person may anchor a vessel to 45, from 30, consecutive days within a 6-month period.
- Requires a county proposing to establish an anchoring limitation area to provide notice to FWC before final adoption of an ordinance and requires FWC to publish notice of the proposed ordinance.
- Prohibits Monroe County from establishing an anchoring limitation area until the county approves, permits, and opens a specified number of new moorings for public use within 1 mile of the Key West Bight City Dock and within the Key West Garrison Bight Mooring Field.
- Requires FWC to designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels until the county approves, permits, and opens the new moorings.
- Revises the acceptable proof that a vessel has not exceeded the time limitation to include documentation and electronic evidence showing that the vessel was in another

location at least 1 mile away within a period of less than 45 days, rather than 30 days, before the inquiry.
- Deletes provisions from the underlying bill that require rulemaking by FWC.

CS/CS by Community Affairs on March 30, 2021:
The committee substitute made a technical change to clarify that the geographic areas already designated as anchoring limitation areas in the statute are grandfathered-in.

CS by Environment and Natural Resources on March 22, 2021:
- Revises the requirements for newly established anchoring limitation areas to include that the area is less than 100 acres in size, not including certain areas of the Florida Intracoastal Waterway or any mooring fields.
- Clarifies the distinction between the provisions that apply to existing anchoring limitation areas and newly established anchoring limitation areas.
- Reverts the definition of "law enforcement officer or agency" to existing law.
- Clarifies that a vessel owner must receive a citation before a vessel may be removed or impounded.

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 Rules; Community Affairs; and Environment and Natural Resources; and Senators Polsky and Bean

595-04295-21 20211946c3

A bill to be entitled

An act relating to anchoring limitation areas; amending s. 327.4108, F.S.; providing that certain areas are grandfathered-in anchoring limitation areas; authorizing counties to establish anchoring limitation areas that meet certain requirements; defining the term "navigable-in-fact waterways"; specifying size requirements for the anchoring limitation areas; requiring the anchoring limitation areas to be marked with signs and buoys that meet certain requirements; prohibiting vessels from anchoring in such areas for longer than a specified time; requiring counties to provide notice to the Fish and Wildlife Conservation Commission within a specified timeframe before establishing an anchoring limitation area; requiring the commission to publish notice of the proposed ordinance on its website and distribute an e-mail notice; prohibiting Monroe County from establishing an anchoring limitation area until the county meets certain requirements; requiring the commission to designate a specified area as a priority for the investigation and removal of derelict vessels until certain conditions are met; requiring owners or operators in certain anchoring limitation areas to be allowed to provide specified proof of compliance with certain provisions; authorizing law enforcement officers or agencies to issue citations for violations under certain circumstances; providing that vessels with a specified number of repeat offenses within a

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

595-04295-21 20211946c3

specified timeframe shall be declared public nuisances and subject to certain provisions; removing applicability provisions relating to the commission's recommendations; reenacting s. 327.73(1)(z), F.S., relating to noncriminal infractions, to incorporate the amendment made to s. 327.4108, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1)(a) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as and shall be considered to be grandfathered-in anchoring limitation areas:

1.~~(a)~~ The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

2.~~(b)~~ Sunset Lake in Miami-Dade County.

3.~~(c)~~ The sections of Biscayne Bay in Miami-Dade County lying between:

a.~~1.~~ Rivo Alto Island and Di Lido Island.

b.~~2.~~ San Marino Island and San Marco Island.

c.~~3.~~ San Marco Island and Biscayne Island.

(b)~~(2)~~ To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and

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

(4), a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise in an anchoring limitation area designated under this subsection.

(2)(a) Notwithstanding s. 327.60(2)(f), a county may establish, in accordance with this subsection, an anchoring limitation area adjacent to urban areas that have residential docking facilities and significant recreational boating traffic. The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's delineated navigable-in-fact waterways. As used in this subsection, the term "navigable-in-fact waterways" means waterways that are navigable in their natural or unimproved condition over which useful commerce or public recreation of a substantial and permanent character is or may be conducted in the customary mode of trade and travel on water. The term does not include lakes or streams that are theoretically navigable; have a potential for navigability; or are temporary, precarious, and unprofitable, but the term does include lakes or streams that have practical usefulness to the public as highways for transportation. Each anchoring limitation area must meet all of the following requirements:

1. Be less than 100 acres in size. For purposes of this subsection, the calculated size of the anchoring limitation area does not include any portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring limitation area;

2. Not include any mooring field or marina; and

3. Be clearly marked with all of the following:

a. Signs that provide reasonable notice to boaters identifying the duration of time beyond which anchoring is limited and identifying the county ordinance by which the anchoring limitation area was created.

b. Buoys. The county that has created an anchoring limitation area shall install and maintain buoys marking the boundary of the anchoring limitation area.

The signs and buoys must be permitted and installed in accordance with ss. 327.40 and 327.41 and commission rule.

(b) Except as provided in subsections (3) and (4), a person may not anchor a vessel for more than 45 consecutive days in any 6-month period in an anchoring limitation area established pursuant to this subsection.

(c) A county proposing establishment of an anchoring limitation area in accordance with this subsection shall provide notice to the commission 30 days before final adoption of an ordinance establishing such anchoring limitation area. The commission shall publish notice of the proposed ordinance on its website and distribute such notice through the commission's Boating and Waterways Section e-mail distribution list for ordinances.

(d) Monroe County may not establish an anchoring limitation area under this subsection until the county approves, permits, and opens new moorings for public use, including at least 250 moorings within 1 mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time, the commission shall designate the area within 1 mile of the Key West Bight City Dock as a priority for

the investigation and removal of derelict vessels.

(3) Notwithstanding subsections (1) and ~~subsection~~ (2), a person may anchor a vessel in an anchoring limitation area:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(5)(a) As used in this subsection, the term "law

enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b)1. For a vessel in an anchoring limitation area established pursuant to subsection (2), upon an inquiry by a law enforcement officer or agency, a vessel owner or operator must be given an opportunity to provide proof that the vessel has not exceeded the limitations described in subsection (2). Such proof may include any of the following:

a. Documentation showing that the vessel was in another location at least 1 mile away within a period of less than 45 days before the inquiry.

b. Electronic evidence, including, but not limited to, navigational devices or tracking devices that show the vessel was in another location at least 1 mile away within a period of less than 45 days before the inquiry.

2. If a vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the limitations described in subsection (2), the law enforcement officer or agency may issue a citation for a violation of this section.

(c)~~(b)~~ A law enforcement officer or agency may remove a vessel from an anchoring limitation area designated under subsection (1) or established pursuant to subsection (2) and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

(d) A vessel that is the subject of more than three violations within 12 months which result in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to s. 705.103, or for a derelict vessel, subject to s. 823.11.

(e)~~(c)~~ A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

(f)~~(d)~~ A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency pursuant to this subsection must:

1. Be licensed in accordance with United States Coast Guard regulations, as applicable.

2. Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions.

3. Be properly equipped to perform such services.

(g)~~(e)~~ In addition to the civil penalty imposed under s. 327.73(1)(z), the operator of a vessel that is removed and impounded pursuant to paragraph (c) ~~(b)~~ must pay all removal and storage fees before the vessel is released. A vessel removed pursuant to paragraph (c) ~~(b)~~ may not be impounded for longer than 48 hours.

(6) A violation of this section is punishable as provided in s. 327.73(1)(z).

~~(7) This section shall remain in effect notwithstanding the~~

~~Legislature's adoption of the commission's recommendations for the regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105.~~

Section 2. For the purpose of incorporating the amendment made by this act to section 327.4108, Florida Statutes, in a reference thereto, paragraph (z) of subsection (1) of section 327.73, Florida Statutes, is reenacted to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(z) Section 327.4108, relating to the anchoring of vessels in anchoring limitation areas, for which the penalty is:

1. For a first offense, up to a maximum of $50.

2. For a second offense, up to a maximum of $100.

3. For a third or subsequent offense, up to a maximum of $250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at

the time such uniform boating citation is issued.

Section 3. 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 Education
Community Affairs
Education
Ethics and Elections
Judiciary

SENATOR TINA SCOTT POLSKY
29th District

April 5, 2021

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

Chair Passidomo,

I respectfully request that you place CS/CS/SB 1946, relating to Anchoring Limitation Areas, on the agenda of the Committee on Rules, at your earliest convenience.

Derelict vessels have unfortunately become a major problem in Florida. They present a hazard to water-goers and boaters, our environment, and create an eye sore along our coasts. Also, certain residential communities have been plagued with live aboard vessels who anchor feet from their homes for months on end and at times, for years. Current law does not adequately provide tools to law enforcement and communities to deal with these threats to public safety.

CS/CS/SB 1946 is the product of nearly a year-long discussion between stakeholders and what I feel represents a happy medium between the communities concerned with this issue and the boating interests.

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

Kindest Regards,

Senator Tina S. Polsky
Florida Senate, District 29

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

REPLY TO:
❒ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
❒ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

04/16/2021
Meeting Date

SB 1946
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Anchoring Limitation Areas

Name Joseph Salzverg ("Saul's-Verg")

Job Title Attorney and Lobbyist

Address 301 S. Bronough Street, Suite 600
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 577-9090

Email joseph.salzverg@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Hollywood

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/21
Meeting Date

CS/SB1946
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Anchoring Limitations

Name Foyt Ralston

Job Title

Address 9167 Shoal Creek Dr
Street

Phone 8502945390

Tallahassee | Fl | 32312
City | *State* | *Zip*

Email foyt@ foytralston.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Friends of the Ortega River

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/16/21
Meeting Date

CS/SB1946
Bill Number (if applicable)

110500
Amendment Barcode (if applicable)

Topic Anchoring Limitations

Name Foyt Ralston

Job Title

Address 9167 Shoal Creek Dr
Street

Phone 8502945390

Tallahassee — *City* | Fl — *State* | 32312 — *Zip*

Email foyt@ foytralston.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Friends of the Ortega River

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 7004
INTRODUCER:	Governmental Oversight and Accountability Committee and Transportation Committee
SUBJECT:	OGSR/Financial Information/Private Entity Applicant
DATE:	April 15, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Price	Vickers		**TR Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Fav/CS**
2.	Price	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7004 saves from repeal the current public records exemption for certain financial information held by the Florida Department of Transportation (FDOT). The information covered by the exemption includes the financial information of a private entity applicant submitted for a loan or credit enhancement from the State-funded Infrastructure Bank (SIB) within the FDOT, for use in constructing and improving transportation facilities or ancillary facilities that produce or distribute natural gas or fuel. The current exemption does not apply to the financial information of a private applicant in default on a SIB loan.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption contained in s. 339.55, F.S., is scheduled to repeal on October 2, 2021. This bill removes the scheduled repeal to continue the exempt status of the information.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect July 1, 2021.

II. Present Situation:

Public Records Law

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] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] The Public Records Act states that:

> [I]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[5]

According to the Public Records Act, 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 public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

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[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(a).
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), 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" 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."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).
[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[12] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act ("OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[14] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[15] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[16] 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[17]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[18] or
- It protects trade or business secrets.[19]

The Act also requires specified questions to be considered during the review process.[20] In examining an exemption, the Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

[12] 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).

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

[14] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The Act does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

[15] Section 119.15(3), F.S.

[16] Section 119.15(6)(b), F.S.

[17] Section 119.15(6)(b)1., F.S.

[18] Section 119.15(6)(b)2., F.S.

[19] Section 119.15(6)(b)3., F.S.

[20] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[21] If the 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. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[22]

State-funded Infrastructure Bank

The 2000 Legislature created the SIB within the FDOT to provide loans and credit enhancements for use in constructing and improving transportation facilities.[23] Government units and private entities may apply to the SIB for assistance. As outstanding obligations are repaid to the SIB, those repayments are made available for future lending on other eligible SIB projects. All proceeds are invested by the State Treasurer in accordance with established investment guidelines.[24]

The SIB consists of two separate escrow accounts, one federally-funded and one state-funded. Projects eligible for assistance from the former account include those which meet all federal requirements under the Transportation Equity Act for the 21st Century and are eligible for assistance under Title 23, U.S.C.,[25] or capital projects as defined in s. 5302 of Title 49, U.S.C.[26] and other applicable federal guidelines.[27]

For assistance from the state-funded account, a project must:
- Be on the State Highway System;
- Provide for increased mobility on the state's transportation system; or
- Provide intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals for the movement of people and goods.[28]

Additionally, projects identified under the Transportation Regional Incentive Program are eligible for assistance from the state-funded account. The FDOT is authorized to match up to 50 percent of the cost for projects that, at a minimum:
- Serve national, statewide, or regional functions and function as part of an integrated regional transportation system;

- 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?

[21] FLA. CONST. art. I, s. 24(c).
[22] Section 119.15(7), F.S.
[23] Section 339.55, F.S.
[24] See the FDOT's website for further information describing the SIB, its history, and its capitalization: https://www.fdot.gov/comptroller/pfo/sibintro.shtm (last visited December 9, 2020).
[25] See 23 U.S.C. s. 119. Generally, projects on the National Highway System.
[26] Generally, public transportation projects.
[27] 23 U.S.C. s. 610.
[28] Section 339.55(2)(a), F.S.

- Are identified in the capital improvements element of a comprehensive plan and are in compliance with local government plan policies relative to corridor management;
- Are consistent with the Strategic Intermodal System Plan developed under s. 339.64, F.S.; and
- Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.[29]

Emergency loans for damages incurred to public-use seaports, airports, and other transit and intermodal facilities within an area that is part of an official state declaration of emergency are also authorized under specified conditions.[30]

A public or private entity seeking financial assistance from the SIB is required to submit an application,[31] based on published advertisement periods via the FDOT's on-line advertised process, which the FDOT reviews to ensure any potential project meets eligibility, financial, and production criteria.[32] If the criteria are met, the FDOT determines an "indicative interest rate for the application based on current market conditions, financial strength of the borrower, term, and risk of loan."[33]

Examples of financial information items required in a SIB loan application include, but are not limited to, providing details of the proposed finance plan, funding sources, information regarding any anticipated bond issue or other debt instrument, loan term and amount, and primary and secondary repayment sources.

Open Government Sunset Review of the Current Public Records Exemption

The current public records exemption[34] was enacted in 2016[35] and, as noted, provides that the financial information of a private entity applicant for a loan or credit enhancement from the SIB, for use in constructing and improving transportation facilities or ancillary facilities that produce or distribute natural gas or fuel, is exempt from the public records inspection and access requirements. The term "financial information" means any private entity applicant's:

- Business plan;
- Pro forma statement;[36]
- Account balance;
- Operating income or revenue;
- Asset value; or

[29] Section 339.55(2)(b), F.S., and see s. 339.2819, F.S.
[30] Section 339.55(2)(c), F.S.
[31] To review an application form, *see* FDOT, *SIB Application and Awards*, available at https://www.fdot.gov/comptroller/pfo/sib-application-and-awards.shtm (last visited December 10, 2020).
[32] *See* the FDOT's *SIB Guidelines for Federal/State* available at Microsoft Word - SIB - Guidelines Federal-State_07.12.18_Final (windows.net) (last visited December 9, 2020).
[33] FDOT, "State Infrastructure Bank," available at State Infrastructure Bank (fdot.gov) (last visited December 9, 2020).
[34] Section 339.55(10), F.S.
[35] Chapter 2016-38, L.O.F.
[36] Pro forma statements are financial statements that estimate a firm's future financial position based on the analysis of current trends and assumptions and are used to prepare future scenarios, business plans or estimates of required cash for financing proposals. The Law Dictionary, *Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.*, available at http://thelawdictionary.org/pro-forma-statement/ (Last visited December 10, 2020).

- Debt.

The exemption ceases if the private entity goes into default.[37]

Consistent with Art. I, s. 24(c) of the State Constitution, the 2016 law included a public necessity statement for a newly created public records exemption, stating that disclosure of the specified information:

- Could harm a private entity by giving the private entity's competitors insights into its financial status and business plan, putting the private entity at a competitive disadvantage;
- Could create the opportunity for theft, fraud, and other illegal activity, jeopardizing the financial security of the private entity and placing it at risk for substantial financial harm; and
- Could expose a private person who is required to provide his or her personal financial information to the FDOT to identity theft or other criminal activity.

The 2016 law further stated:

- Private entities may be unwilling to submit an application to the SIB for a loan without the exemption, which unwillingness could limit the FDOT's opportunities for cost-effective or strategic solutions for constructing and improving transportation facilities.
- The public benefit derived from having more private entities apply for SIB assistance outweighs the public benefit derived from accessing a private entity's financial information.

The existing public records exemption for the financial information of a private entity SIB applicant stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature.

In preparation for the required review, committee staff surveyed the FDOT with respect to the existing exemption. As described by the FDOT:

> For any private entity borrower, FDOT has required customary financial statements and information regarding historical and projected collections of revenues and the value of any assets that are proposed to be pledged as collateral for repayment of the loan, together with information regarding any other liens, existing or proposed, that attach to any collateral to be pledged to FDOT. This may extend to revenues or assets of the private borrower that were not originally proposed by the borrower as a source of repayment or collateral for the requested loan. *Depending on the strength of the private borrower's financial position and the value of available collateral, FDOT may require an additional third party guaranty of repayment. Financial information required of a private borrower, or private guarantor, may include tax returns and financial account information.* The definition of "financial information" contained in s. 339.55(10), "any business plan, pro forma statement, account balance, operating income or revenue, asset value, or debt of the applicant" describes

[37] The right of the public to inspect or copy the financial information of a government-unit applicant for a SIB loan is unchanged by the bill.

> information that FDOT typically requires to be furnished by private borrowers.[38]

The FDOT additionally advises that all financial information is not always provided with the application, and not all loans are closed within one year, so applicants *and their guarantors* may have to provide updated information as negotiation for SIB assistance continues. Further, the original collateral may change, in which case new supporting financial information is required. However, the current exemption applies only to the private entity applicant's financial information and does not apply to the financial information of an applicant's guarantor.[39]

The FDOT recommends that the Legislature retain the current exemption for the financial information of a private entity SIB applicant and, in addition, the FDOT recommends expanding the exemption to apply to the financial information of a private entity SIB applicant's guarantor.

Based upon a review of this public records exemption under the Open Government Sunset Review Act, as well as survey responses from, discussions with, and recommendations of the FDOT, the professional staff of the Senate Transportation Committee recommends that the Legislature retain the existing public records exemption for the financial information of a private entity SIB applicant established in s. 338.55(10), F.S., and expand the exemption to apply to the financial information of a private entity SIB applicant's guarantor.

III. Effect of Proposed Changes:

The bill is based on an Open Government Sunset Review of a public records exemption for the financial information of a private entity applicant for a loan or credit enhancement from the State-funded Infrastructure Bank (SIB) within the FDOT, for use in constructing and improving transportation facilities or ancillary facilities that produce or distribute natural gas or fuel.

Section 1 continues the existing public records exemption established in s. 339.55(10), F.S., for the financial information of a private entity SIB applicant. The existing exemption does not apply to financial information of an applicant who is in default on a SIB loan. The information will continue to be exempt from public disclosure beyond October 2, 2021.

The bill takes effect July 1, 2021.

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[38] Emphasis added. *See* the FDOT's Open Government Sunset Review Questionnaire Response by email to committee staff, September 10, 2020. (On file in the Senate Transportation Committee.) Between 2012 and just prior to enactment of the current exemption in 2016, based on available records, the FDOT advises it received approximately seven requests for financial information provided by a private entity SIB applicant to the FDOT. After enactment on July 1, 2016, through October 28, 2020, the FDOT received approximately 22 requests. During both periods of time, the requesting entities included public involvement advocates, development companies, governmental bodies, private citizens, and the media.

[39] *See* the FDOT's email to committee staff, November 19, 2020. (On file in the Senate Transportation Committee.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require municipalities or counties to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of municipalities or counties to raise revenue.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

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. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

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 law is to protect financial information submitted to the FDOT as part of the application process for a loan or credit-enhancement. This bill exempts only financial information of the applicant from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the FDOT making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The FDOT will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 339.55 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 31, 2021:
The CS removes language that expanded the exemption to include the financial information of the applicant's guarantor. The CS merely continues the current exemption unmodified beyond October 2, 2021.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability; and Transportation

585-03623-21 20217004c1

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 339.55, F.S., relating to an exemption from public records requirements for financial information of a private entity applicant which the Department of Transportation requires as part of a certain application process; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (10) of section 339.55, Florida Statutes, is amended to read:

339.55 State-funded infrastructure bank.—

(10)~~(a)~~ Financial information of a private entity applicant which the department requires as part of the application process for loans or credit enhancements from the state-funded infrastructure bank is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption does not apply to records of an applicant who is in default of a loan issued under this section. As used in this subsection, the term "financial information" means any business plan, pro forma statement, account balance, operating income or revenue, asset value, or debt of the applicant.

~~(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.~~

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

Florida Senate - 2021 **CS for SB 7004**

585-03623-21 20217004c1

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

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 31, 2021

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

Dear Chair Passidomo,

I respectfully request that **SB 7004 – Transportation Public Records Exemption** be placed on the next available Agenda for Rules.

Regarding the need for **SB 7004 – Transportation Public Records Exemption:**

Currently, financial information of a private entity applicant which is required as part of the application process for assistance from the SIB is exempt from public records requirements, as disclosure of sensitive financial information could harm the applicant.

(E.g., competitive disadvantage, opportunity for theft or fraud, risk of substantial financial harm.)

The bill expands the exemption to include financial information of guarantors of applicants.

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

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 7014
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	OGSR/Office of Insurance Regulation
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Johnson	Knudson		**BI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Johnson	Phelps	RC	**Favorable**

I. Summary:

SB 7014 amends s. 624.4212, F.S., to save from repeal the public records exemption relating to insurer reporting of certain proprietary business and other information that is held by the Office of Insurance Regulation. The proprietary business information includes, but is not limited to, reports submitted by insurers, such as the enterprise risk report, the own risk and solvency assessment (ORSA) summary report or a substantially similar ORSA report, the corporate governance annual disclosure (CGAD), and supporting documentation. This information will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

By saving s. 624.4212, F.S., from repeal, the bill also prevents the repeal of amendments made to s. 628.8015, F.S., and s. 628.803, F.S., implementing the following National Association of Insurance Commissioners Model Acts and Regulations:

- Risk Management and Own-risk and Solvency Assessment Model Act.
- Corporate Governance and Disclosure Model Act; and the corresponding Corporate Governance Annual Disclosure Model Regulation.

The bill is not expected to impact state or local government revenues and expenditures.

The bill takes effect 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]

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.[3] A public record includes virtually any document or recording, regardless of its physical form or the method of transmission.[4] 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."[5]

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.[6] A violation of the Public Records Act may result in civil or criminal liability.[7]

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.[8] 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.[9]

General exemptions from the public records requirements are contained in the Public Records Act.[10] Specific exemptions often are placed in the substantive statutes relating to a particular

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[2] *Id*.

[3] 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."

[4] 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."

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

[6] Section 119.07(1)(a), F.S.

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

[8] FLA. CONST. art. I, s. 24(c).

[9] *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).

[10] *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).

agency or program.[11] 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.[12] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act[14] (the Act) prescribes a legislative review process for newly created or substantially amended[15] public records or open meetings exemptions, with specified exceptions.[16] 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.[17]

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.[18] 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;[19]
- 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;[20] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[21]

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

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[11] *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).
[12] *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).
[13] *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).
[14] Section 119.15, F.S.
[15] 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.
[16] 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.
[17] Section 119.15(3), F.S.
[18] Section 119.15(6)(b), F.S.
[19] Section 119.15(6)(b)1., F.S.
[20] Section 119.15(6)(b)2., F.S.
[21] Section 119.15(6)(b)3., F.S.
[22] Section 119.15(6)(a), F.S. The specified questions are:

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

Regulation of Insurance in Florida

States are the primary regulators of insurance companies. In Florida, the Office of Insurance Regulation (OIR)[25] is primarily responsible for licensing insurance companies, monitoring the solvency of regulated insurers, examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary.

In 2016, the Legislature enacted laws[26] implementing the National Association of Insurance Commissioners' (NAIC)[27] Risk Management and Own-risk and Solvency Assessment (ORSA) Model Act[28] and the Corporate Governance and Disclosure Model Act and the corresponding Corporate Governance Annual Disclosure Model Regulation[29] (CGAD). The ORSA Model Act requires insurers to conduct an internal assessment of all relevant material risks (e.g., underwriting, credit, market) potentially affecting their ability to meet policyholder obligations. The ORSA Model Act requires insurers (or an insurance group, as applicable) to conduct an ORSA at least annually and file an ORSA summary report based with their domestic regulator or lead state (for an insurance group).

The CGAD Model Act and Regulation, which specify requirements for extensive disclosure of regulated insurers' corporate governance practices, are designed to provide insurance regulators with sufficient information on insurers' governance practices through an annual reporting.

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

[23] *See generally* s. 119.15, F.S.
[24] Section 119.15(7), F.S.
[25] Section 20.121(3)(a), F.S.
[26] Ch. 2016-206, Laws of Fla. The ORSA and CGAD requirements are codified in ss. 628.8015, F.S. Section 628.803, F.S., provides sanctions for noncompliance with reporting requirements.
[27] The OIR is a member of the National Association of Insurance Commissioners (NAIC), which is an association of state insurance regulators. The NAIC coordinates regulation and examination of multistate insurers, and promotes uniform model laws among the states. The NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, financial, and organizational standards. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review. The OIR is accredited by the NAIC.
[28] National Association of Insurance Commissioners, The Risk Management and Own Risk and Solvency Assessment Model Act (2012) https://content.naic.org/sites/default/files/inline-files/MDL-505.pdf?64 (last viewed Oct. 26, 2020).
[29] National Association of Insurance Commissioners, Corporate Governance Annual Disclosure Model Act, (2014) https://content.naic.org/sites/default/files/inline-files/MDL-305.pdf and the Corporate Governance Annual Disclosure Model Regulation (2014) https://content.naic.org/sites/default/files/inline-files/MDL-306.pdf (last viewed October 26, 2020).

Insurers or insurer groups must file a Corporate Governance Annual Disclosure (CGAD) with their domestic regulator or the lead state regulator (for an insurance group). The CGAD Model and Regulation require insurers to document highly confidential information about their corporate governance framework, and submit annual disclosures to the insurance regulator. This includes the policies of their boards of directors, procedure for the oversight of critical risk areas, and appointment practices. Provisions in the model act and regulation require that states must keep ORSA and CGAD documents confidential.

Open Government Sunset Review of the Public Records Exemption for Insurer Reporting of Proprietary Business Information

Section 624.4212, F.S., defines insurer "proprietary business information"[30] and makes such information and related information held by the OIR confidential and exempt[31] from s. 119.07(1), F. S., and Art. I, s. 24(a) of the State Constitution.[32] This includes proprietary business information and supporting documents contained in documents, such as the actuarial opinion summary, principle-based valuation report, enterprise risk report, insurance holding company registration, ORSA summary report, and corporate governance annual disclosure. In some instances, the OIR may disclose this confidential and exempt proprietary business information to other state, federal, and international agencies.[33]

In 2016, the Legislature amended s. 624.4212, F.S., to provide that, except for information obtained by the OIR which would otherwise be available for public inspection, that ORSA summary reports, substantially similar ORSA reports, CGAD annual disclosure, and supporting documents held by the OIR pursuant to s. 628.8015, F.S., [34] are confidential and exempt from s. 119.07(1) and Art. I, s. 24(a) of the State Constitution. In creating the exemption, the Legislature found that exempting the ORSA reports and CGAD disclosures, and supporting information is a public necessity. The Legislature recognized that the release of the ORSA reports, the CGAD annual disclosures, and supporting documents would injure the insurer in the marketplace by providing competitors with the insurer's confidential business information.

Section 624.4212, F.S., is repealed on October 2, 2021, unless reviewed and saved from repeal by the Legislature pursuant to the Act. Further, the 2016 law[35] enacting the amendments to s. 624.4212, F.S, provides that s. 628.8015, F.S., and the amendments made by this law to s. 628.803, F.S., are repealed on October 2, 2021, unless, before that date, the Legislature saves

[30] Section 624.4212(1), F.S.
[31] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att'y Gen. (1985).
[32] Ch. 2014-100, Laws of Fla.
[33] Section 624.4212(2), F.S.
[34] Ch. 2016-206, Laws of Fla.
[35] *See* s. 3, ch. 2016-206, Laws of Fla. *See* Notes to Sections 628.8015 and 628.803, F.S.

from repeal through reenactment the amendments to s. 624.4212, F.S., made by SB 1416[36] or similar legislation.[37]

Senate Banking and Insurance Committee staff surveyed the OIR to ascertain whether the public records exemption in s. 624.4212, F.S., remains necessary. Staff reviewed the OIR's responses to the questions to be considered by the Legislature in accordance with s. 119.115(6)(a), F.S. The OIR recommends that the Legislature reenact this public records exemption. The exemption in s. 624.4212, F.S., is adequately meeting its goal and the OIR does not find a need to expand the exemption at this time.[38]

III. Effect of Proposed Changes:

Section 1 amends s. 624.4212, F.S., to delete the scheduled repeal of the current public records exemption of insurer proprietary business information and other information. This information will continue to be confidential and exempt from public disclosure. Further, the Office of Insurance Regulation is authorized to disclose[39] such proprietary business information and other information to the Office of Insurance Consumer Advocate within the Department of Financial Services.

By saving s. 624.4212, F.S., from repeal, the bill also prevents the repeal of amendments made to s. 628.8015, F.S., and s. 628.803, F.S., implementing the following National Association of Insurance Commissioners Model Acts and Regulations:

- Risk Management and Own-risk and Solvency Assessment Model Act.
- Corporate Governance and Disclosure Model Act; and the corresponding Corporate Governance Annual Disclosure Model Regulation.

Section 2 provides the bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The 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.

[36] Ch. 2016-205, Laws of Fla.
[37] Section 628.803, F.S., authorizes the OIR to impose sanctions for specified violations of the Insurance Code. If s. 624.4212, F.S., was not reenacted, the amendments in s. 628.803(1) and (4), F.S. , provides sanctions
[38] Correspondence from the OIR (Aug. 10, 2020) on file with Senate Banking and Insurance Committee.
[39] The recipient, here the Office of Insurance Consumer Advocate, must agree in writing to maintain the confidential and exempt status of the information.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article 1, 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. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

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 this law is to protect all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system. 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:

The reenactment of the public records exemption will protect sensitive business information about an insurer or insurer group that is reported to the OIR.

C. Government Sector Impact:

The OIR will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.4212 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.

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 Banking and Insurance

597-01969-21 20217014__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 624.4212, F.S.; adding the Office of Insurance Consumer Advocate to the list of entities to which the Office of Insurance Regulation may disclose confidential and exempt information; removing the scheduled repeal of an exemption from public records requirements for certain proprietary business information and information that is confidential and held by the Office of Insurance Regulation; providing an effective date.

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

Section 1. Section 624.4212, Florida Statutes, is amended to read:

624.4212 Confidentiality of proprietary business and other information.—

(1) As used in this section, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer, or a person or an affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and which:

(a) Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and that the information has not been disclosed unless disclosed pursuant to a statutory requirement,

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597-01969-21 20217014__

an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

(b) Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and

(c) Includes:

1. Trade secrets as defined in s. 688.002 which comply with s. 624.4213.

2. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

3. The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.

4. Information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.

5. Internal auditing controls and reports of internal auditors.

(2) Proprietary business information contained in the following items held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) The actuarial opinion summary required under ss. 624.424(1)(b) and 625.121(3) and information related thereto.

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

(b) A notice filed with the office by the person or affiliated person who seeks to divest controlling stock in an insurer pursuant to s. 628.461.

(c) The filings required under s. 628.801 and information related thereto.

(d) The enterprise risk report required under ss. 628.461(3) and 628.801 and information related thereto.

(e) Information provided to or obtained by the office pursuant to participation in a supervisory college established under s. 628.805.

(f) Beginning on the operative date of the valuation manual as defined in s. 625.1212(2):

1. An actuarial examination conducted pursuant to s. 625.1212(5)(c), and information related thereto;

2. The annual certification submitted by the insurer pursuant to s. 625.1212(6)(b)2., and information related thereto;

3. The principle-based valuation report filed pursuant to s. 625.1212(6)(b)3., and information related thereto; and

4. Mortality, morbidity, policyholder behavior, or expense experience and other data submitted pursuant to s. 625.1212(7), which includes potentially company identifiable or personally identifiable information.

(3) Except for information obtained by the office which would otherwise be available for public inspection, the following information held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) An ORSA summary report, a substantially similar ORSA

report, and supporting documents submitted pursuant to s. 628.8015.

(b) A corporate governance annual disclosure and supporting documents submitted pursuant to s. 628.8015.

(4) Information received from the NAIC, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the office for use in the performance of its duties relating to insurer valuation and solvency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5) The office may disclose information made confidential and exempt under this section:

(a) If the insurer to which it pertains gives prior written consent;

(b) Pursuant to a court order;

(c) To the Actuarial Board for Counseling and Discipline upon a request stating that the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to the office for preserving the confidentiality of the information;

(d) To other states, federal and international agencies, the Office of Insurance Consumer Advocate, the National Association of Insurance Commissioners and its affiliates and subsidiaries, and state, federal, and international law enforcement authorities, including members of a supervisory college described in s. 628.805 if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has certified in

writing its legal authority to maintain such confidentiality; or

(e) For the purpose of aggregating information on an industrywide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

~~(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is 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

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 31, 2021

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

Dear Madame Chair Passidomo:

I respectfully request that SB 7014: OGSR/Office of Insurance Regulation, be scheduled for a hearing in the Committee on Rules at your earliest convenience. This bill saves from repeal a public record exemption relating to insurer proprietary business information held by the OIR.

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

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 7026
INTRODUCER:	Regulated Industries Committee
SUBJECT:	OGSR/Florida State Boxing Commission
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Oxamendi	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Oxamendi	Phelps	RC	**Favorable**

I. Summary:

SB 7026 saves from repeal the public records exemption for proprietary confidential business information provided by a promoter to the Florida State Boxing Commission (commission) or through an audit of the promoter's books and records pursuant to s. 548.06, F.S.

This public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the scheduled repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect 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 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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

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, chapter 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 with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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[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*, (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).
[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).

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]
- 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:[24]

- 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?

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]

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of 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. A violation is a felony of the third degree.[27]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …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 thereof. 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:

[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S.
[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

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.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 119.071(1)(f), F.S., exempts from public records requirements in s. 119.07(1), F.S., data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret, as defined in s. 812.081, F.S., and agency-produced data processing software that is sensitive.
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[28]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.

[28] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. 85-62 (1985).

- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[29] and the right to recover damages for the misappropriation of a trade secret.[30] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[31]

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[29] Section 688.003, F.S.
[30] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[31] *See* s. 688.008, F.S.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt "trade secrets" as defined in s. 688.002(4), F.S., or include "trade secrets" as defined in s. 688.002(4), F.S., within the meaning of the term "proprietary confidential information" or "proprietary business information" when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.

- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss

Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[32] In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[33]

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department).

Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements of ch. 548, F.S., and the rules adopted by the commission for holding the match.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.[34] Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.[35] This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

[32] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[33] *Id.*
[34] Section 548.006(3), F.S.
[35] Section 548.002(2), F.S.

Section 548.002(20), F.S., defines the term "promoter" to mean:

> any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Reporting and Tax Requirement

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.[36] The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.[37] Chapter 548, F.S., does not require the promoter to retain a copy of the written report.
The term "gross receipts" includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.[38]

According to the department, the current definition of "gross receipts" has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.[39]

A concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.[40]

Any written report must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional 5 days allowed for mailing.[41] According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

[36] Section 548.06(1), F.S.
[37] *Id.*
[38] Section 548.06(1), F.S.
[39] Section 548.06(2), F.S.
[40] Section 548.06(3), F.S.
[41] Section 548.06(4), F.S.

Section 548.015, F.S., requires a concessionaire to file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed $40,000 for any single event.[42]

Public Records Exemption for a Promoter's Books and Records

Section 548.062, F.S., provides a public records exemption for proprietary confidential business provided by a promoter to the commission or obtained by the commission through an audit of the promoter's books and records under s. 548.06, F.S.[43]

Under s. 548.062, F.S., proprietary confidential information means information that:
- Is owned or controlled by the promoter;
- The promoter intends to be and treats as private;
- If disclosed, would cause harm to the promoter or its business operations;
- Has not been disclosed, except for any disclosure pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information not be released to the public.

The information protected also includes:
- The number of ticket sales for a match;
- The amount of gross receipts after a match;
- A trade secret, as defined in s. 688.002, F.S.;
- Business plans;
- Internal auditing controls and reports of internal auditors; or
- Reports of external auditors.

This public records exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

Open Government Sunset Review Questionnaires

In August 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to the commission and to approximately 50 promoters. The commission and one promoter responded to the questionnaire. Staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

In its response to the questionnaire, the commission noted that public records requests for information provided to the commission by promoters are common, and that such requests are

[42] Section 548.06(5), F.S.
[43] This exemption was enacted in ch. 2014-129, Laws of Fla., and amended by ch. 2016-21, Laws of Fla.

typically made by reporters and competitors. The commission has relied on the exemption in s. 548.062, F.S., to deny such requests.

The commission noted that it has not conducted an audit of any promoter since July 1, 2016. Therefore, it has not acquired any information that is subject to the exemption from promoters through an audit.

The commission recommended that the exemption in s. 548.062, F.S., be reenacted.[44]

III. Effect of Proposed Changes:

The bill amends s. 548.062, F.S., to remove the scheduled repeal of a public records exemption for proprietary confidential business information provided by a promoter to the Florida State Boxing Commission (commission) or through an audit of the promoter's books and records pursuant to s. 548.06, F.S.

This public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, proprietary confidential information will remain confidential and exempt from public disclosure.

The bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The 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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, Thus, the bill does not require an extraordinary vote for enactment. thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity

[44] *See Open Government Sunset Review Questionnaire* response from the Florida Boxing Commission on file with the Senate Committee on Regulated Industries.

justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

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 exemption in the bill 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:

The private sector will continue to be subject to the cost, to the extent imposed, associated with Florida State Boxing Commission making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The Florida State Boxing Commission will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 548.062 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.

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

580-02166-21 20217026__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 548.062, F.S., relating to an exemption from public records requirements for proprietary confidential business information obtained through an audit of a promoter's books and records or provided by a promoter to the Florida State Boxing Commission; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 548.062, Florida Statutes, is amended to read:

548.062 Public records exemption.—

(1) As used in this section, the term "proprietary confidential business information" means information that:

(a) Is owned or controlled by the promoter;

(b) The promoter intends to be and treats as private;

(c) If disclosed, would cause harm to the promoter or its business operations;

(d) Has not been disclosed, except for any disclosure pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information not be released to the public; and

(e) Concerns any of the following:

1. The number of ticket sales for a match;

2. The amount of gross receipts after a match;

3. A trade secret, as defined in s. 688.002;

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

580-02166-21 20217026__

4. Business plans;

5. Internal auditing controls and reports of internal auditors; or

6. Reports of external auditors.

(2) Proprietary confidential business information provided by a promoter to the commission or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

~~(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

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 2, 2021

I respectfully request that **Senate Bill #7026**, relating to OGSR/Florida State Boxing Commission, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

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 7036
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Department of Agriculture and Consumer Services
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Becker	Becker		**AG Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 7036 saves from repeal the public records exemption for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer services as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency which is confidential and exempt under the laws or regulations of that state or federal agency under s. 570.077, F.S.

The public records exemption stands repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. This bill removes the scheduled repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect 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 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]

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

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 with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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[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*, (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).
[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.*,

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]
- 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

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.

[22] Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:[24]

- 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?

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 Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services (division) within the department is the clearinghouse for consumer complaints, information, and protection. The division regulates various businesses, such as motor vehicle repair shops, charitable organizations, pawnbrokers, health studios, sellers of travel, intrastate movers, professional surveyors and mappers, sweepstakes/game promotions, and telemarketers.[27]

Until 2016 Florida's public record laws made any information obtained by the department in administrative and civil investigations open to the public. According to the department, this presented a hurdle to partnering with other state and federal agencies, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS), because the department could not maintain the same level of privacy adopted and required by those federal and other state agencies.[28] As a result, investigations by the department were hindered because it was often unable to gather pertinent information from, enter into confidentiality agreements with, or participate in multi-jurisdiction task forces with other state and federal agencies.

[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S.
[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] *See* https://www.fdacs.gov/Divisions-Offices/Consumer-Services, (last visited March 3, 2021).
[28] Florida Department of Agriculture and Consumer Services, *SB 754 Agency Analysis*, (November 12, 2015) (on file with the Senate Committee on Agriculture).

The FTC operates a Consumer Sentinel database that is protected from public record disclosure. Information from this database can only be provided to a state agency that agrees not to disseminate the information.[29] This database contains information on subjects relating to:

- Identity Theft;
- Do-Not-Call Registry Violations;
- Computers, the Internet, and Online Auctions;
- Telemarketing Scams;
- Advance-fee loans and credit scams;
- Immigration Services;
- Sweepstakes, Lotteries, and Prizes;
- Business Opportunities and Work-at-home Schemes;
- Health and Weight Loss Products; and
- Debt Collection, Credit Reports, and Financial Matters.

Public Record Exemptions under Review

In 2016, the Legislature created a public records exemption for criminal or civil intelligence or investigative information or any other information held by the department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information that is shared is confidential or exempt[30] under the laws or regulations of that state or federal agency. The department may obtain, use, and release the information in accordance with the conditions imposed by the joint or multi-agency agreement.

The public records exemption does not apply to information held by the department as part of an independent examination or investigation conducted by the department.

The department may release the confidential and exempt information in the furtherance of its official duties and responsibilities, or to another governmental agency in the furtherance of its official duties and responsibilities.

The 2016 public necessity statement[31] for the exemptions states the following:

> Without the exemption, the department will be unable to obtain information that could assist it in pursuing violations of law under its jurisdiction. With this exemption, the department should increase efficiency of investigations by saving time on developing investigative leads, witness data, and victim data. Furthermore, the exemption is necessary to enable the department to participate in joint or multiagency investigations

[29] *Id*. See also, Federal Trade Commission, *Consumer Sentinel Network*, available at: https://www.ftc.gov/enforcement/consumer-sentinel-network, (last visited March 1, 2021).

[30] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See WFTV, Inc. v. Sch. Bd. of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Riviera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 1994); Williams v. City of Minneola, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (Aug. 1, 1985).

[31] Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

> and examinations. Without the exemption, the department would continue to be excluded from information due to the inability to maintain investigative confidentiality. Without the sharing and coordination of information, governmental agencies may be required to conduct duplicative independent investigations or examinations in order to meet their regulatory responsibilities. With this exemption, the department will strengthen relationships with other state and federal agencies, allowing them to become more efficient by sharing critical investigative data.[32]

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2021, unless reenacted by the Legislature.[33]

Open Government Sunset Review Questionnaire

In February 2021, the Professional Staff of the Senate Agriculture Committee sent an Open Government Sunset Review Questionnaire to the department. The department reported that between 2017 and 2020 it received a total of ten requests for information held under s. 570.077, F.S. Information for active cases was not released but information was eventually released once investigations ceased to be active or were adjudicated by the courts.[34]

The department stated that all federal, state, county, and local law enforcement information and intelligence products generated by agencies across the nation are shared with the Office of Agricultural Law Enforcement (OALE) staff via multi-agency portals, email, and physical transmission and are shared with the expectation and belief that active intelligence and law enforcement investigative information is confidential and exempt. Should these protections be withdrawn from department documents, it would substantially change the mechanisms by which information would be shared with the OALE. This would increase the manpower and subsequent effort required to obtain such documentation and would also risk officer safety.[35]

The department recommended that the public records exemption in s. 570.077, F.S., should be reenacted.[36]

III. Effect of Proposed Changes:

SB 7036 amends s. 570.077, F.S., to remove the scheduled repeal of a public records exemption for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer services as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency which is confidential and exempt under the laws or regulations of that state or federal agency.

[32] Chapter 2016-161, Laws of Fla.
[33] Section 624.4212(6), F.S
[34] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Agriculture and Consumer Services on file with the Senate Committee on Agriculture.
[35] *Id.*
[36] *Id.*

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The 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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

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 exemption in the bill 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. The private sector will continue to be subject to the cost, to the extent imposed, associated with the department making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

None. The department will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 570.077 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.

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 Agriculture

575-02382-21 20217036__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 570.077, F.S., which provides an exemption from public records requirements for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer Services as part of an examination or investigation with another state or federal regulatory, administrative, or criminal justice agency; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 570.077, Florida Statutes, is amended to read:

570.077 Confidentiality of intelligence or investigative information.—

(1) Criminal or civil intelligence or investigative information or any other information held by the department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency which is confidential or exempt under the laws or regulations of that state or federal agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The department may obtain, use, and release the information in accordance with the conditions imposed by the joint or multiagency agreement.

(2) The department may release information that is made

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confidential and exempt under subsection (1):

(a) In the furtherance of its official duties and responsibilities.

(b) To another governmental agency in the furtherance of its official duties and responsibilities.

(3) The public records exemption provided in subsection (1) does not apply to information held by the department as part of an independent examination or investigation conducted by the department.

~~(4) 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

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 7050
INTRODUCER:	Community Affairs Committee
SUBJECT:	OGSR/Unsolicited Proposals
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Hackett	Ryon		**CA Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Hackett	Phelps	RC	**Favorable**

I. Summary:

SB 7050 amends s. 255.065, F.S., to save from repeal the public records and public meeting exemptions relating to unsolicited proposals submitted by a private entity to a public entity seeking to establish a public-private partnership (P3).

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption contained in s. 255.065, F.S., is scheduled to repeal on October 2, 2021. This bill removes the scheduled repeal to continue the exempt status of unsolicited P3 proposals.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect 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 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.,

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and 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, chapter 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 with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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[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*, (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).
[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).

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]

Competitive Solicitations and the Public Records Act

Section 119.071(1)(b), F.S., exempts from public disclosure sealed responses to a competitive solicitation.[16] Vendors' sealed responses are exempt until a governmental entity notices its intended decision or 30 days after the governmental entity unseals the responses. Sealed responses to a competitive solicitation may be exempt under certain circumstances if a competitive solicitation is withdrawn and reissued; however, such records remain exempt for no longer than 12 months after the governmental entity rejects the responses to the initial competitive solicitation.

Meetings where negotiations, presentations, and discussions concerning a competitive solicitation are held may be closed to the public, pursuant to s. 286.0113(2), F.S. Transcripts of these meetings and any records presented during such meetings are exempt from public disclosure. All meeting records become public when the governmental entity notices its intended decision or 30 days after the governmental entity unseals the vendors' responses.

Open Government Sunset Review Act

The Open Government Sunset Review Act[17] (the act) prescribes a legislative review process for newly created or substantially amended[18] public records or open meetings exemptions, with specified exceptions.[19] 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.[20]

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[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] "Competitive solicitation" is defined to mean the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.
[17] Section 119.15, F.S.
[18] 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.
[19] 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.
[20] Section 119.15(3), F.S.

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.[21]

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;[22]
- 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;[23] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[24]

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:[25]

- 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?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[26] 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.[27]

Public-private Partnerships – Section 255.065, F.S.

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects. Through the agreements, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use

[21] Section 119.15(6)(b), F.S.
[22] Section 119.15(6)(b)1., F.S.
[23] Section 119.15(6)(b)2., F.S.
[24] Section 119.15(6)(b)3., F.S.
[25] Section 119.15(6)(a), F.S.
[26] *See generally* s. 119.15, F.S.
[27] Section 119.15(7), F.S.

of the public. In addition to the sharing of resources, each party shares in the risk and reward potential in the delivery of the service and/or facility. Numerous Florida Statutes encourage and provide guidance for P3 projects including those for services and facilities specific to transportation,[28] housing,[29] and education[30].

Chapter 2013-223, L.O.F., created s. 287.05712, F.S., to authorize the use of public-private partnerships by local governments. The law also established the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to study the new P3 process outlined in law and make recommendations for the Legislature's consideration for purposes of creating a uniform process for establishing public-private partnerships.[31] Chapters 2016-153 and 2016-154, L.O.F., utilized the task force analysis to create the current provisions of s. 255.065, F.S.

Section 255.065, F.S., grants responsible public entities (RPEs) (e.g., counties, municipalities, school districts and special districts)[32] the authority to engage in P3 projects for the development of a wide range of public-use facilities or projects that serve a public purpose. Examples of qualifying projects include those for mass transit, vehicle parking, airports or seaports, educational facilities and courthouse or city hall public sector buildings or complexes.[33] The public-private partnerships law establishes requirements to which RPEs must adhere, including procedures for reviewing and approving proposals and public records and public meetings exemptions related to any unsolicited proposals submitted.

Procurement Procedures[34]

A responsible public entity (RPE) may receive unsolicited proposals or may solicit proposals for a qualifying public-private project. A reasonable application fee may be established to cover an RPE's costs of evaluating unsolicited proposal submissions.[35] If the RPE does not evaluate the unsolicited proposal, the RPE must return the application fee.

If the RPE intends to enter into a comprehensive agreement for a project as a result of an unsolicited proposal, the public entity must publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the public entity has received a proposal and will accept other proposals for the same project.

The timeframe within which the public entity accepts proposals is determined on a project-by-project basis based upon the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received.

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[28] *See* s. 334.30, F.S., on public-private transportation facilities.
[29] *See* s. 420.0003(3)(b), F.S., on the state housing strategy.
[30] *See* s. 1013.35, F.S., on school district educational facilities plans.
[31] The task force held 10 meetings to study the law, understand how governmental entities around the world have implemented public-private partnerships, and to hear from interested parties and stakeholders.
[32] Section 255.065(1)(j), F.S., defines "responsible public entity" to mean a county, municipality, school district, special district, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.
[33] *See* s. 255.065(1)(i)1.-4., F.S.
[34] *See* s. 255.065(3), F.S.
[35] Section 255.06(3)(a)3., F.S., allows an RPE to request additional review funds if the initial application fee does not cover the costs to evaluate an unsolicited proposal.

Certain benchmark timeframe parameters are, however, specified: receipt of other proposals must be for at least 21 days, but no more than 120 days, after the initial date of publication.[36]

Project Qualification and Approval[37]

In the case of an unsolicited proposal, after the public notification period has expired, the RPE ranks the proposals received in order of preference. The RPE may then begin negotiations for a comprehensive agreement with the highest-ranked firm.[38] Before approving a comprehensive agreement, the RPE must determine that the proposed project:

- Is in the public's best interest.
- Is for a facility that is owned by the RPE or for a facility for which ownership will be conveyed to the RPE.
- Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the RPE.
- Has adequate safeguards in place to ensure that the RPE or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
- Will be owned by the RPE upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

Public Records and Public Meetings Exemptions – Section 255.065(15), F.S.

Similar to the competitive solicitation governance in the Public Records Act, pursuant to s. 255.065(15)(b), F.S., an unsolicited proposal received by a RPE is exempt from the inspection and copying provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution until such time as the RPE provides notice of an intended decision for a qualifying project. If the RPE rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the RPE provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.

An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the RPE rejecting all proposals. If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.[39]

In addition, s. 255.065(15)(d)1., F.S., provides that any portion of a meeting of a RPE during which an unsolicited proposal that is exempt is discussed is exempt from the public meetings

[36] Section 255.065(3)(b), F.S

[37] *See* ss. 255.065(4)-(5), F.S.

[38] Section 225.065(5)(c), F.S., includes provisions for the RPE to consider subsequent-ranked firms or reject all proposers if negotiations results are unsatisfactory.

[39] These provisions echo the 2014 task force recommendation to consider establishing an exemption from public records requirements for proprietary and confidential and trade secret information provided in P3 proposals. The task force also recommended such an exemption be temporary, with the proposal becoming publicly accessible after a period of time.

governance found in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution until such time as the RPE provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the RPE if such entity does not issue a competitive solicitation for the project.

Staff Review of Exemption under Review

The Senate Committee on Community Affairs and the House Oversight, Transparency & Public Management Subcommittee disseminated a questionnaire to local governments surveying their experiences with the s. 255.065, F.S., P3 process since its adoption in 2016.[40] Ultimately, 16 local governments provided responses to the questionnaires.[41]

Responding local governments that actually engaged in s. 255.065, F.S., P3s roughly split between those recommending reenacting the exemptions as is and those recommending reenacting the exemptions with certain changes.[42] No respondents recommended repealing the exemptions. One local government cited litigation surrounding unsolicited P3 proposals under s. 255.065, F.S.[43] Additionally, Miami-Dade County and Seminole County have local administrative codes that supplement the statutory P3 process in their jurisdictions.[44]

Examples of suggested potential changes include extending the 180 day time limit that an unsolicited proposal remains exempt from public records requirements to give local governments more time to evaluate and review submissions. There was also mention of difficulty in creating a notice for other similar proposals based on an unsolicited proposal which complies with the public records exemption but also generates commensurate and comparable scope and design submissions from additional entities.

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[40] Senate Committee on Community Affairs, *Open Government Sunset Review Questionnaire: Information related to unsolicited proposals for a public-private partnership* (Sep. 8, 2020) (on file with the Senate Committee on Community Affairs). The Florida League of Cities and the Florida Association of Counties assisted in the dissemination of these questionnaires to their respective memberships.

[41] Local governments included the following counties: Broward, Indian River, Miami-Dade, Monroe, Pasco, St. John's, Seminole; cities: Clarke Shores, Hialeah, Jacksonville Beach, Ocean Ridge, Pinellas Park, South Miami, Southwest Ranches, Venice; and special districts: Seminole Improvement District. Questionnaire on file with the Senate Committee on Community Affairs.

[42] There were four "as is" recommendations, four "with changes" recommendations, one "as is" that clarified they were not "averse to considering changes," and two that did not answer the recommendations queries. Five respondents signified having no experience with P3s and therefore did not opine on reenactment.

[43] *See AECOM Technical Services, Inc. v. Broward County, Florida*, No. CACE-19-025964 (Fla. 17th Cir. Ct., Broward County, filed December 19, 2019). The complaint contends that because the unsolicited proposal was not timely considered or accepted within 180 days, it should not be a public record. An Agreed Order to reschedule an April 6, 2020, Final Hearing was granted on March 20, 2020, which effectively suspends the case at the complaint stage.

[44] *See* Section 2-8.2.6, Public-private partnerships; unsolicited proposals, Code of Ordinances, Miami-Dade County; Section 3.56, Guidelines for Public/Private Partnerships, Unsolicited Proposals and Evaluation Process, Seminole County Administrative Code.

III. Effect of Proposed Changes:

The bill amends s. 255.065, F.S., to save from repeal the current public records and public meeting exemptions relating to unsolicited proposals submitted by a private entity to a public entity seeking to establish a public-private partnership. This information will continue to be exempt from public disclosure beyond October 2, 2021.

The bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require municipalities or counties to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of municipalities or counties to raise revenue.

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 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 exemption under sunset review; it does not expand this exemption or create a new one. 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 public records exemption appears to be a reasonable measure to prevent release of proprietary or trade secret information provided in unsolicited P3 proposals. Because the exemptions are temporary, proposals become publically accessible after a period of time.

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 private sector will continue to be subject to the cost, to the extent imposed, associated with the agencies making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The agencies will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 255.065 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.)

B. Amendments:

None.

By the Committee on Community Affairs

578-02375-21 20217050__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 255.065, F.S., which provides exemptions from public records and public meetings requirements for unsolicited proposals received by a responsible public entity and portions of meetings at which such proposals are discussed; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (15) of section 255.065, Florida Statutes, is amended to read:

255.065 Public-private partnerships; public records and public meetings exemptions.—

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

(a) As used in this subsection, the term "competitive solicitation" has the same meaning as provided in s. 119.071(1).

(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public

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entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.

3. An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.

(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2.a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

b. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the responsible public entity if such entity does not issue a competitive solicitation for the project.

c. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from s. 119.07(1)

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and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.

d. A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

~~(c) 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 2. This act shall take effect October 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:	SB 7066
INTRODUCER:	Regulated Industries Committee
SUBJECT:	Public Records and Public Meetings/Public Service Commission
DATE:	April 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Sharon	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	Sharon	Phelps	RC	**Favorable**

I. Summary:

SB 7066 creates a public meetings and public records exemption for certain confidential information discussed at a Public Service Commission (PSC) hearing, where it is found that the hearing cannot otherwise be fully and fairly conducted.

The bill expressly exempts any hearing or portion of a hearing before the PSC, which it finds cannot be fully and fairly conducted without revealing information that has been made confidential by order, in response to a claim of proprietary confidential business information, or a request for confidentiality.

The bill requires the PSC to make a finding of confidentiality no later than 20 days before the scheduled hearing. Additionally, the entire hearing, including confidential portions, must be recorded by a certified court reporter.

The bill provides a 21-day time frame, after the transcript is filed with the clerk, during which parties may make a claim that certain portions of the transcript should remain exempt from public disclosure, otherwise the claim is waived. The bill requires the PSC clerk to prepare a transcript redacting information approved by the PSC for confidential treatment. The redacted transcript is subject to public records laws at the conclusion of the underlying proceeding.

The bill provides a mechanism for a court to review the transcript to determine if the redactions do not comply with applicable confidentiality orders. If a judicial determination is made, only the portion of the recording or transcript found to be non-exempt may be disclosed to the public.

Under the bill, the PSC is not required to live-stream or make a recording available on its website for any portion of a hearing made exempt under its provisions.

The bill provides a statement of public necessity.

In accordance with s. 119.15, F.S., the bill provides that these exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill is effective upon becoming law.

II. Present Situation:

Public Records

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2] However, the Legislature may provide a public records exemption from the requirements of Article I, section 24(a) through general law.[3] The law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.[4]

Public Meetings

The Florida Constitution sets forth the state's public policy regarding access to government meetings.[5] All meetings of any collegial public body of the executive branch of state government or of a county, municipality, school district, or special district where public business will be transacted or discussed must be open to the public and noticed.

Florida Statute addresses public meetings in more detail within the "Government in the Sunshine Law" or "Sunshine Law."[6] This act requires meetings of any board or commission of any state agency, in which official acts are to be taken, to be open to the public at all times.[7] The board or commission is required to provide reasonable notice of all such meetings."[8] Entities subject to the Sunshine Law are "prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility."[9] Minutes must be kept for all public meetings and promptly recorded.[10] These records are open to public inspection and this right is enforceable in state circuit court, authorized to issue injunctive relief.[11]

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] FLA. CONST. art. I, s. 24(c).
[4] *Id*.
[5] FLA. CONST. art. I, s. 24(b).
[6] Section 286.011, F.S.
[7] *Id*.
[8] Section 286.011(1), F.S.
[9] Section 286.011(6), F.S.
[10] Section 286.011(2), F.S.
[11] *Id*.

Open Government Sunset Review Act

The Open Government Sunset Review Act[12] (act) prescribes a legislative review process for newly created or substantially amended[13] public records or open meetings exemptions, with specified exceptions.[14] 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.[15]

This 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.[16] 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;[17]
- 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;[18] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[19]

The Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[20] The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[21] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.[22]

[12] Section 119.15, F.S.
[13] 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.
[14] Sections 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.
[15] Section 119.15(3), F.S.
[16] Section 119.15(6)(b), F.S.
[17] Section 119.15(6)(b)1., F.S.
[18] Section 119.15(6)(b)2., F.S.
[19] Section 119.15(6)(b)3., F.S.
[20] Section 350.001 F.S.
[21] *See* Florida Public Service Commission, *The PSC's Role*, http://www.psc.state.fl.us (last visited Mar. 22, 2021).
[22] *Id*.

The PSC is comprised of five commissioners.[23] They are appointed by the Governor and confirmed by the Florida Senate.[24] Commissioners are appointed to four-year terms, not to exceed three terms.[25] In administering their duties, commissioners serve in both a quasi-legislative and quasi-judicial capacity, as they adopt rules and render decisions in complex matters that are infused with legislative policy considerations.[26] They are regarded as subject matter experts as it relates to utility operations.[27]

Proceedings before the PSC

Any meeting or proceeding with two or more PSC commissioners in attendance and any proceeding where a decision concerning the rights or obligations of any person is made, must be streamed live on the internet and a copy of the meeting or proceeding must be made available on the PSC's website.[28]

During the PSC's hearings, commissioners rule on procedural matters, establish evidence of record, weigh record evidence, and apply the law to the facts of the case.[29] Many hearings involve proprietary confidential business information, which is exempt from public disclosure by statute.[30] The PSC has established practices and procedures which allow their hearings to be conducted in compliance with the Sunshine Law while still protecting proprietary confidential business information from disclosure.[31] In these hearings, confidential material typically plays a minor role in the resolution of any particular issue, and the parties avoid public disclosure of this material by stipulating to certain facts and keeping discussions of confidential matters minimal.[32]

The PSC is authorized to refer matters to the Division of Administrative Hearings (DOAH) for formal evidentiary hearings and fact finding.[33] However, the PSC conducts nearly all of its own hearings.[34] Historically, the PSC has only referred cases to the DOAH in rare instances, where the PSC has found that one or more issues in the docket are so inextricably intertwined with confidential information, and the volume of that information is so substantial, that it cannot afford the parties a full and fair hearing in the public while also protecting sensitive confidential information.[35]

[23] Section 350.01, F.S.
[24] Section 350.031, F.S.
[25] Section 350.01, F.S.
[26] *See* PSC, *HB 1311 House Companion Agency Analysis* (Mar. 4, 2021) (on file with the Senate Committee on Regulated Industries).
[27] *See* s. 350.042(3)(a), F.S. providing legislative findings that commissioners should be "educated and informed on regulatory policies and developments in science, technology, business management, finance, law, and public policy which are associated with the industries that the commissioners regulate."
[28] Section 350.01(8), F.S.
[29] PSC, *HB 1311 Analysis*, *supra* at n. 23.
[30] *See* s. 350.121, F.S.
[31] PSC, *HB 1311 Analysis*, *supra* at n. 23.
[32] *Id*.
[33] Sections 350.125 and 120.569(2), F.S.
[34] PSC, *HB 1311 Analysis*, *supra* at n. 23.
[35] *Id*.

Treatment of Proprietary Confidential Business Information before the PSC

The following provisions require records received by the PSC, which are claimed or found to be proprietary confidential business information by the PSC, to be kept confidential and exempt from public disclosure:

- Section, 364.183, F.S., relating to Telecommunications Companies;
- Section, 366.093, F.S., relating to Public Utilities;
- Section 367.156, F.S., relating to Water and Wastewater Systems; and
- Section 368.108, F.S., relating to Gas Transmission and Distribution.

"Proprietary confidential business information," means:

> information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.[36]

It includes, but is not limited to the following:

- Trade secrets;
- Internal auditing controls and reports of internal auditors;
- Security measures, systems, or procedures;
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information; and
- Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.[37]

A PSC finding on proprietary confidential business information is effective for a period set by the PSC, but may not exceed 18 months, unless the PSC also finds good cause that the information warrants protection from disclosure for a longer period of time.[38]

III. Effect of Proposed Changes:

Section 1 amends s. 286.0113, F.S., relating to general exemptions from public meetings to provide a public meetings exemption for a hearing, or portions of a hearings, before the PSC which the PSC finds cannot be fully and fairly conducted without revealing confidential information. Such information must have been made confidential by PSC order in response to a

[36] Sections 364.183, 366.093, 367.156, and 368.108, F.S.
[37] *Id*.
[38] *Id*.

claim of proprietary confidential business information, pursuant to s. 364.183, F.S., or request for confidentiality pursuant to ss. 366.093, 367.156, or 368.108, F.S.

The bill requires a finding of confidentiality to be made no later than 20 days before the scheduled hearing. Additionally, the entire hearing, including confidential portions, must be recorded by a certified court reporter and the redacted transcript made subject to Florida's public records laws.

The bill provides a 21-day time frame, after the transcript is filed with the clerk, during which parties may make a claim that certain portions of the transcript should remain exempt, otherwise the claim is waived.

The bill requires the PSC clerk to prepare a transcript redacting information approved by the PSC for confidential treatment. The redacted transcript is subject to public records laws at the conclusion of the underlying proceeding.

The bill provides a mechanism for a court to review the transcript to determine if the redactions do not comply with applicable confidentiality orders. If a judicial determination is made, only the portion of the recording or transcript found to be non-exempt may be disclosed to the public.

The bill is subject to the Open Government Sunset Review Act, in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2026, unless reenacted by the Legislature.

Section 2 amends s. 350.01, F.S., to provide that the PSC is not required to live-stream or make a recording available on its website for any portion of a hearing made exempt under its provisions.

Section 3 provides a statement of public necessity stating that:

- The PSC is charged by statute with establishing just, fair, and compensatory utility rates, and the fact-finding role of the PSC is integral in its decision making, as all PSC decisions must be supported by a record of competent, substantial evidence;
- Under certain circumstances, the PSC must be able to evaluate and discuss proprietary confidential business information in order to make a determination in the public interest, and parties must be able to conduct cross-examination on such information in formal evidentiary proceedings;
- The PSC and parties to PSC proceedings are constrained from asking questions about essential proprietary confidential business information important to the outcome of a case; and
- It is a public necessity that those portions of formal administrative hearings before the PSC at which proprietary confidential business information is discussed, and the associated portions of hearing transcripts, be made exempt from the Sunshine Law to allow parties to conduct cross-examination on such information and the PSC to evaluate the information and make a determination in the public interest.

Section 4 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, section 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public meeting or public record exemption. The bill creates a new public meeting and public record exemption; thus, it requires a two-thirds vote for final passage.

Article I, section 24(c) of the Florida Constitution, requires a newly created public meeting or public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public meeting exemption for only the portion of a formal administrative hearing held by the PSC that would reveal information specifically identified as confidential proprietary business information exempt from disclosure under existing public record exemptions in ss. 364.183, 366.093, 367.156, and 368.108, F.S. and creates a public record exemption for only those portions of the hearing transcripts found confidential pursuant to an order by the PSC.

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: 286.0113 and 350.01.

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 the Committee on Regulated Industries

580-03277-21 20217066__

A bill to be entitled

An act relating to public records and public meetings; amending s. 286.0113, F.S.; exempting discussions of certain confidential information by the Public Service Commission during certain hearings from public meetings requirements; requiring such hearings to be recorded by a certified court reporter; providing that only redacted transcripts are subject to public records requirements; requiring certain parties to request, within a specified timeframe, that portions of the transcript remain exempt from disclosure; providing that failure to timely file a redacted version of the transcript and a request for confidentiality constitutes a waiver of a claim of confidentiality to that portion of the transcript; providing requirements for the redacted transcripts; providing for future legislative review and repeal of the exemptions; amending s. 350.01, F.S.; exempting certain closed hearings or portions of hearings of the Public Service Commission from the requirement that each hearing of the commission be streamed live and made available on the commission's website; providing a statement of public necessity; providing an effective date.

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

Section 1. Present subsection (4) of section 286.0113, Florida Statutes, is redesignated as subsection (5), and a new

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

580-03277-21 20217066__

subsection (4) is added to that section, to read:

286.0113 General exemptions from public meetings.—

(4)(a) Any hearing or portion of a hearing before the Public Service Commission conducted pursuant to ss. 120.569 and 120.57 which the commission finds cannot be fully and fairly conducted without necessarily revealing information that has been made confidential by prior order of the commission, or for which a request for confidentiality has been filed pursuant to s. 366.093, s. 367.156, or s. 368.108 or a claim of proprietary confidential business information has been filed pursuant to s. 364.183, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The commission must make any such finding no later than 20 days before the scheduled hearing.

(b) The entire hearing, including any confidential portion, must be recorded by a certified court reporter. Only the redacted version of the transcript prepared as set forth in paragraph (d) is subject to disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution, in accordance with s. 364.183, s. 366.093, s. 367.156, or s. 368.108, as applicable.

(c) Within 21 days after filing the transcript, or a shorter timeframe if required by the commission, each party asserting that one or more portions of the transcript contains confidential information that should remain exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution shall provide to the commission clerk redacted versions of that information and an accompanying request for confidential treatment. Failure to timely file such redacted versions and request constitutes a waiver of any continued claim of confidentiality to only that portion of the transcript.

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

(d) The commission clerk shall prepare a transcript redacting all information requested by a party pursuant to paragraph (c) and for which confidentiality orders have been entered. The redacted transcript must be made part of the public record at the conclusion of the underlying hearing. The information redacted in the transcript shall remain exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review of the transcript, determines that any information redacted does not comply with applicable confidentiality orders. In the event of such a judicial determination, only the portion of the recording or transcript which the court determines reveals nonexempt data and information may be disclosed to the public.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (8) of section 350.01, Florida Statutes, is amended to read:

350.01 Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings.—

(8) Each meeting, including each internal affairs meeting, workshop, hearing, or other proceeding attended by two or more commissioners, and each such meeting, workshop, hearing, or other proceeding where a decision that concerns the rights or obligations of any person is made, must ~~shall~~ be streamed live on the Internet, and a recorded copy of the meeting, workshop,

hearing, or proceeding must ~~shall~~ be made available on the commission's website. This subsection does not apply to any hearing or portion of a hearing before the Public Service Commission conducted pursuant to ss. 120.569 and 120.57 which has been closed to the public pursuant to s. 286.0113(4) and s. 24(b), Art. 1 of the State Constitution.

Section 3. (1) The Legislature finds that it is a public necessity that those portions of hearings of the Public Service Commission conducted pursuant to ss. 120.569 and 120.57, Florida Statutes, at which proprietary confidential business information under ss. 364.183, 366.093, 367.156, and 368.108, Florida Statutes, is discussed be made exempt from public meetings requirements. As used in this section, the term "proprietary confidential business information" has the same meaning as in s. 364.183, s. 366.093, s. 367.156, or s. 368.108, Florida Statutes, and includes information that has been made confidential by prior order of the commission and is necessary for the commission to discuss in order to evaluate it and make a determination in the public interest.

(2) The Legislature further finds that the commission and parties to commission hearings are constrained from asking questions about essential proprietary confidential business information important to the outcome of a case. Pursuant to its legislative directive under chapters 364, 366, 367, and 368, Florida Statutes, the commission is the tribunal charged with establishing just, fair, and compensatory rates for utilities or companies under its jurisdiction. As such, the commission has the authority to adjudicate all matters within its jurisdiction, and its administrative hearings are conducted in compliance with

chapter 120, Florida Statutes. The fact-finding role of the commission is integral to its decisionmaking, and all commission decisions must be supported by competent, substantial record evidence. Accordingly, under certain circumstances, the commission must be able to fully evaluate and discuss proprietary confidential business information in order to make a determination in the public interest. In addition, parties must be allowed to conduct full and fair cross-examination when testimony is taken or documents are made a part of the record pursuant to s. 120.569(2)(j), Florida Statutes.

(3) The Legislature further finds that the public disclosure of proprietary confidential business information, through discussion of such information in a formal administrative hearing or portion thereof conducted in the sunshine pursuant to ss. 120.569 and 120.57, Florida Statutes, would significantly harm utilities by impairing the ability of utilities regulated by the Public Service Commission to fairly negotiate with third parties and compete for goods and services within the marketplace. Such disclosure would also harm the businesses with which such utilities contract by disclosing such businesses' proprietary or confidential information and make it less likely for such businesses to do business with regulated utilities in the future. Additionally, the Legislature finds that the public disclosure of proprietary confidential business information would cause harm to the company's ratepayers or business operations, resulting in higher utility prices or lower quality of service.

(4) The Legislature further finds that the public and private harm in the public disclosure of the information made

exempt by this act outweighs any public benefit derived from the disclosure of such information.

(5) Therefore, the Legislature finds that it is a public necessity to make those portions of hearings of the Florida Public Service Commission at which proprietary confidential business information is discussed exempt from public meetings requirements and the commission's livestreaming requirements, and to make the recordings and transcripts thereof exempt from public records requirements.

Section 4. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 2, 2021

I respectfully request that **Senate Bill #7066**, relating to Public Records and Public Meetings/Public Service Commission, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

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)

4/16/21
Meeting Date

7066
Bill Number (if applicable)

Topic * SB 7066

Amendment Barcode (if applicable)

Name Kaley Slattery

Job Title FL public service commission

Address _____ Phone 407-451-7107
Street

_____ Email _____
City *State* *Zip*

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

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

Representing FL PSC

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

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

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 4/16/2021 9:03:10 AM
Ends: 4/16/2021 10:42:32 AM **Length: 01:39:23**

9:03:09 AM Meeting called to order
9:03:19 AM Roll call
9:03:22 AM Quorum is present
9:03:52 AM Chair Passidomo instructs the public at the civic center
9:04:30 AM Happy day!! 30 bills on the agenda
9:05:15 AM SB1434 Disposition of Unclaimed Property by Senator Wright
9:05:43 AM No questions
9:06:00 AM Chase Mitchell, Department of Financial Services, waives in support
9:06:14 AM No debate
9:06:17 AM Roll call: CS/SB 1434 is reported favorably
9:06:57 AM Tab 9 CS/CS/SB 804 Substance Abuse Services by Senator Harrell
9:07:37 AM No questions
9:07:56 AM Tonnette Graham, Florida Association of Counties, waives in support
9:08:13 AM No debate
9:08:16 AM Roll call: CS/CS/SB 804 is reported favorably
9:08:59 AM CS/SB 7004 OGSR/Financial Information / Private Entity Applicant by Senator Harrell
9:09:11 AM No questions
9:09:15 AM No public appearance
9:09:18 AM Debate: Senator Thurston asks for explanation
9:09:45 AM Senator Harrell responds
9:09:57 AM Senator Harrell waives close
9:09:59 AM Roll call: CS/SB 7004 is reported favorably
9:10:41 AM CS/SB 420 Motor Vehicle Insurance Coverage Exclusions by Senator Hooper
9:10:55 AM No questions
9:11:05 AM No public appearance
9:11:09 AM No debate
9:11:13 AM Senator Hooper waives close
9:11:18 AM Roll call CS/SB 420 is reported favorably
9:11:53 AM CS/SB 358 Water Safety and Swimming Certification for K-12 Students by Senator Berman
9:12:43 AM No questions
9:12:54 AM Public Appearance: Dominic Calabro, Florida Taxpayers, waives in support
9:13:08 AM Karen Mazzola, Florida Parent Teacher Association, waives in support
9:13:35 AM Dr. Bill Kent, International Swimming Hall of Fame ISHOF Board of Directors, speaks in support
9:16:31 AM Belinda Keiser, Keiser University, speaks in support
9:19:35 AM No debate
9:19:37 AM Senator Berman waives close
9:19:40 AM Roll call: CS/SB 358 is reported favorably
9:20:16 AM CS/CS/SB 1070 Estates and Trusts by Senator Berman
9:20:38 AM No questions
9:20:47 AM Public Appearance: Kenneth Pratt, Florida Bankers Association, waives in support
9:20:51 AM Martha Edenfield, The Real Property, Probate and Trust Law Section of Florida Bar, waives in support
9:21:07 AM No debate
9:21:11 AM Roll call CS/CS/SB 1070 is reported favorably
9:21:50 AM CS/CS/SB 1060 Limitation of Liability for Voluntary Engineering or Architectural Services by Senator Bradley
9:22:05 AM No questions
9:22:28 AM Public Appearance:
9:22:29 AM Chief Ray Coburn, Florida Fire Chiefs' Association, waives in support
9:22:41 AM No debate
9:22:44 AM Senator Bradley waives close
9:22:46 AM Roll call CS/CS/SB 1060 is reported favorably
9:23:23 AM SB 7050 OGSR/Unsolicited Proposals by Senator Bradley

9:23:41 AM No questions
9:23:57 AM No public appearance
9:23:58 AM No debate
9:24:01 AM Senator Bradley waives close
9:24:03 AM Roll call SB 7050 is reported favorably
9:24:39 AM SB 7014 OGSR/Office of Insurance Regulation by Senator Boyd
9:24:53 AM No questions
9:25:09 AM No public appearance; no debate
9:25:14 AM Senator Boyd waives close
9:25:18 AM Roll call on SB7014 is reported favorably
9:26:04 AM CS/SB 1234 False Reports of Crimes by Senator Boyd
9:26:12 AM No questions
9:26:15 AM No public appearance
9:26:25 AM No debate
9:26:26 AM Senator Boyd waives close
9:26:30 AM Roll call CS/SB 1234 is reported favorably
9:27:08 AM CS/SB 1288 Assets on an Estate in Administration by Senator Boyd
9:27:26 AM No questions
9:27:29 AM No public appearance
9:27:35 AM No debate
9:27:36 AM Roll call CS/SB 1288 is reported favorably
9:28:15 AM SB 1476 Controlled Substances by Senator Brodeur
9:28:41 AM No questions
9:28:49 AM No public appearance
9:29:01 AM Senator Boyd waives close
9:29:04 AM Roll call SB1476 is reported favorably
9:29:40 AM CS/CS/SB 1946 Anchoring Limitation Areas by Senator Polsky
9:30:10 AM Amendment barcode 110500 delete-all by Senator Polsky is explained
9:32:02 AM AA 518756 is explained by Senator Albritton
9:33:42 AM No questions
9:33:44 AM No public appearance
9:33:50 AM No debate
9:33:52 AM Senator Polsky comments it is a friendly amendment
9:34:00 AM Amendment 518756 is adopted
9:34:11 AM Back on Delete-all amendment 110500
9:34:21 AM No public appearance
9:34:22 AM No debate
9:34:25 AM Senator Polsky waives close
9:34:30 AM Amendment 110500 is adopted
9:34:36 AM Back on the bill as amended
9:34:40 AM Joseph Salzverg, City of Hollywood, waives in support
9:35:01 AM Foyt Ralston, speaks in support of the bill for Friends of the Ortega River and also for Bonnie Basham of Boat USA
9:35:24 AM No debate
9:35:26 AM Senator Polsky waives close
9:35:37 AM Roll call CS/CS/CS/SB 1946 is reported favorably
9:36:11 AM CS/SB 902 Community Associated Pools by Senator Rodrigues
9:36:52 AM No questions
9:36:55 AM No public appearance
9:36:58 AM No debate
9:37:00 AM Senator Rodrigues waives close
9:37:03 AM Roll call CS/SB 902 is reported favorably
9:37:36 AM SB 1456 Public Records/Examination and Assessment Instruments by Senator Rodrigues
9:38:01 AM No questions
9:38:03 AM No public appearance
9:38:04 AM No debate
9:38:09 AM Senator Rodrigues waives close
9:38:11 AM Roll call SB 1456 is reported favorably
9:38:58 AM CS/SB 768 Administration of Vaccines by Senator Baxley
9:39:31 AM Amendment 447522 by Senator Baxley
9:39:52 AM No questions
9:39:53 AM No public appearance

9:40:04 AM No debate
9:40:10 AM Amendment 447522 is adopted
9:40:19 AM Back on the bill
9:40:20 AM No questions
9:40:23 AM Public appearance
9:40:25 AM Jake Farmer, Florida Retail Federation, speaks in support
9:40:27 AM Karen Mazzola, Florida Parent Teacher Association, waives in support
9:40:47 AM Phillip Suderman, Americans for Prosperity, waives in support
9:41:00 AM Senator Baxley waives close
9:41:04 AM Roll call CS/CS/SB 768 is reported favorably
9:41:44 AM SB 826 Child Protection Teams by Senator Baxley
9:42:07 AM No questions
9:42:08 AM No public appearance
9:42:15 AM No debate
9:42:17 AM Senator Baxley waives close
9:42:19 AM Roll call SB 826 is reported favorably
9:43:05 AM CS/SB 418 Public Records/Persons Provided Public Emergency Shelter by Senator Burgess
9:43:20 AM No questions
9:43:26 AM No public appearance
9:43:27 AM No debate
9:43:35 AM Senator Burgess waives close
9:43:37 AM Roll call CS/SB 418 is reported favorably
9:44:18 AM CS/CS/SB 716 Consent for Pelvic Examinations by Senator Book
9:44:36 AM No questions
9:44:59 AM Public Appearance: Barbara DeVane, FL NOW, waives in support
9:45:01 AM Toni Large, Florida College of Emergency Physicians, waives in support
9:45:05 AM Jarrod Fowler, Florida Medical Association, waives in support
9:45:10 AM Amy Young, Vital MD Group Holding LLC, waives in support
9:45:17 AM Amy Young, American Congress of Obstetricians and Gynecologists - District XII, waives in support
9:45:30 AM Steve Winn, Florida Osteopathic Medical Association, waives in support
9:45:40 AM No debate
9:45:41 AM Senator Book waives close
9:45:44 AM Roll call CS/CS/SB 716 is reported favorably
9:46:21 AM CS/CS/SB 950 Bicycle and Pedestrian Safety by Senator Book
9:46:25 AM Bill is explained
9:46:38 AM No questions
9:47:39 AM No public appearance
9:47:44 AM No debate
9:47:49 AM Senator Book waives close
9:47:51 AM Roll call CS/SB 950 is reported favorably
9:48:50 AM SB 1934 Health Care Practitioner Discipline by Senator Book
9:49:52 AM Bill is explained
9:49:53 AM Take up the amendment
9:49:58 AM Amendment 171240 is explained
9:49:59 AM No questions
9:50:14 AM No public appearance
9:50:21 AM No debate
9:50:21 AM Senator Book waives close
9:50:28 AM Amendment 171240 is adopted
9:50:33 AM Back on the bill as amended
9:50:37 AM No questions
9:50:40 AM No public appearance
9:50:46 AM No debate
9:50:47 AM Senator Book waives close
9:50:50 AM Roll call CS/SB 1934 is reported favorably
9:51:40 AM CS/SB 490 Juneteenth Day by Senator Bracy
9:51:50 AM No questions
9:52:40 AM Public Appearance
9:52:42 AM John R. Nelson, Monticello speaks against
9:53:43 AM Lonnie Mann, Tallahassee speaks against
9:55:13 AM Kathleen Spehar, Council on Culture and Arts, waives against
9:55:37 AM Mary Miaisha Mitchell, Greater Frenchtown Front Porch Florida, speaks against

9:58:05 AM Michael Johnson, North Lauderdale speaks against
10:00:22 AM Robert Holladay, Tallahassee Historical Society, speaks against
10:02:21 AM Althamesa Barnes, Florida African American Museum Network, speaks against
10:05:47 AM Christic Henry, Council of Neighborhood Associations, speaks against
10:08:27 AM No debate
10:08:31 AM Senator Powell speaks to the publics' concerns
10:10:53 AM Senator Bracy considers an amendment regarding public concerns in his close on the bill
10:12:04 AM Roll call CS/SB 490 is reported favorably
10:13:07 AM SB 518 Drones by Senator Diaz
10:13:19 AM No questions
10:13:29 AM No public appearance
10:13:34 AM No debate
10:13:36 AM Senator Diaz waives close
10:13:39 AM Roll call SB 518 is reported favorably
10:14:18 AM CS/SB 964 Environmental Compliance Costs by Senator Diaz
10:14:43 AM No questions
10:14:44 AM No public appearance
10:14:51 AM No debate
10:14:52 AM Senator Diaz waives close
10:14:55 AM Roll call CS/SB 964 is reported favorably
10:15:39 AM SB 616 Public Accountancy by Senator Gruters
10:16:07 AM Amendment 796946 technical changes
10:16:33 AM No question
10:16:39 AM No debate
10:16:44 AM Senator Gruters waives close
10:16:46 AM Amendment 796946 is adopted
10:16:57 AM No questions
10:17:07 AM Public: Justin Thames, Government Affairs, waives in support
10:17:12 AM No debate; Senator Gruters waives close
10:17:13 AM Roll call CS/SB 616 is reported favorably
10:18:09 AM SB 7066 Public Records and Public Meetings /Public Service Commission by Senator Hutson
10:19:23 AM No questions
10:19:29 AM Public Appearance:
10:19:30 AM Kaley Slattery, FL Public Service Commission, waives in support
10:19:32 AM No debate
10:19:35 AM Senator Hutson waives close
10:19:36 AM Roll call SB 7066 is reported favorably
10:20:16 AM SB 7026 OGSR/Florida State Boxing Commission by Senator Hutson
10:20:38 AM No questions
10:20:42 AM No public appearance
10:20:44 AM No debate
10:20:52 AM Roll call on SB 7026 is reported favorably
10:21:29 AM SB 848 Electronic Legal Documents by Senator Powell
10:21:31 AM Senator Powell explains the bill
10:21:42 AM No questions
10:22:37 AM Senator Powell waives close
10:22:43 AM Roll call SB 848 is reported favorably
10:23:12 AM SB 7036 OGSR/Department of Agriculture and Consumer Services by Senator Rouson
10:23:43 AM No questions
10:24:00 AM No public appearance
10:24:06 AM No debate
10:24:09 AM Senator Rouson waives close
10:24:11 AM Roll call SB 7036 is reported favorably
10:24:47 AM CS/CS/SB 1080 Tobacco and Nicotine Products by Senator Hutson
10:24:59 AM Bill is explained
10:25:12 AM Questions
10:25:28 AM Senator Brandes has questions regarding age limit
10:25:31 AM Senator Hutson answers the series of questions
10:25:42 AM Senator Brandes with another question
10:25:51 AM Senator Hutson answers
10:25:55 AM Senator Brandes with a follow-up question
10:25:58 AM Senator Hutson responds

10:26:02 AM Senator Brandes continues in questions
10:26:04 AM Senator Brandes asks regarding National Guard
10:26:08 AM Senator Hutson responds
10:26:11 AM Senator Brandes in questions
10:26:28 AM Senator Hutson responds
10:26:43 AM Senator Brandes continues with questioning
10:26:51 AM Senator Hutson responds
10:26:59 AM Senator Brandes with a question
10:27:07 AM Senator Hutson speaks on current law
10:27:12 AM Question series between Senator Brandes and Senator Hutson on distance from school
10:27:12 AM Senator Brandes question on vaping per distance home to school
10:27:25 AM Senator Hutson responds
10:27:37 AM Senator Mayfield with clarifying question
10:27:46 AM Senator Hutson responds
10:28:48 AM Senator Mayfield with follow up question
10:29:05 AM Senator Hutson responds
10:29:34 AM Senator Mayfield with another question
10:29:57 AM Senator Hutson explains
10:30:21 AM Senator Bracy with a question
10:30:33 AM Senator Hutson responds
10:30:33 AM Senator Bracy in questions
10:30:42 AM Senator Hutson responds
10:31:10 AM Senator Baxley with a question
10:31:38 AM Senator Hutson clarifies
10:32:35 AM Public Appearance
10:32:37 AM Ashley Lyerly, American Lung Association, waives against
10:32:52 AM Natalie Kato, Tobacco 21, waives against
10:32:58 AM Tiffany McCaskill Henderson, American Heart Association, waives against
10:33:11 AM Susan Harbin, American Cancer Society, speaks against
10:36:54 AM No debate
10:37:00 AM Senator Hutson closes on bill
10:37:39 AM Roll call CS/CS/SB 1080 is reported favorably
10:38:42 AM Senators request vote after motions to be shown in the record:
10:39:25 AM Show on record votes Favorable: Senator Thurston-Tab 29-SB7050, Tab 4, Tab 11-SB848, Tab 28-SB7036; Senator Gibson-Tab 25-CS/SB7004, Tab 6-SB616; Senator Book- Tab 1-CS/SB358, Tab 4-CS/SB490, SB518; Senator Baxley move record show favorable on CS/SB1434; Senator Albritton yes on Tab 3.
10:40:24 AM Senator Bean announces winner is Chair Passidomo
10:40:29 AM Senator Farmer votes favorable: CS/SB1434, CS/CS/SB804, CS/SB7004, CS/SB420, CS/SB358 CS/SB964, SB616
10:41:06 AM Senator Diaz affirmative vote on Tab 6- SB616, Tab 11-SB848, Tab27-SB7026, Tab 28-SB7036, Tab30-SB7066
10:41:12 AM Senator Mayfield votes yes on Tab 5-SB518
10:41:22 AM Chair Passidomo gives instructions to Senators regarding next week's meeting.
10:42:00 AM Senator Bracy votes yes on CS/SB 1434
10:42:14 AM Senator Baxley moves we adjourn
10:42:16 AM Without objection, meeting is adjourned.